



U.S. Commodity Futures Trading Commission
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The Honorable Jeff Bingaman
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

Dear Senator Bingaman:

Thank you for your May 27, 2008 letter requesting information from the Commodity Futures Trading Commission (CFTC or Commission) concerning crude oil trading and related regulatory issues. I appreciated meeting with you on Monday to discuss these important matters in person and certainly share your concerns that these markets must function properly and transparently for all Americans without manipulation and fraud.

As you mentioned in your May 27 letter, recent substantial increases in the price of crude oil and other commodities have put considerable strain on American families, farmers, and businesses. These issues are a matter of intense focus at the Commission, due to the key role that futures markets play in the price discovery process. Please be assured that the CFTC is committed to ensuring that our nation's futures markets operate fairly and efficiently, and that commodity prices are determined by the fundamental forces of supply and demand, rather than by abusive or manipulative practices.

Just last week, the CFTC announced its national crude oil investigation and several other important energy initiatives, including a new agreement with the U.K. Financial Services Authority to expand the data received from institutions trading crude oil products across borders. The CFTC also announced that it will use its authorities to demand more detailed data from energy market participants on the amount of index money coming into the markets and to examine whether these funds are properly classified for regulatory and reporting purposes. These initiatives are critical, and we are working hard to implement all of them expeditiously.

Yesterday, the CFTC also announced the formation of a CFTC-led interagency task force to evaluate developments in commodity markets. The task force – which includes staff representatives from the CFTC, Federal Reserve, Department of the Treasury, Securities and Exchange Commission, Department of Energy, and Department of Agriculture – will examine investor practices, fundamental supply and demand factors, and the role of speculators and index traders in the commodity markets. It is intended to bring together the best and brightest minds in government to aid public and regulatory understanding of the forces that are affecting the functioning of these markets, and it will strive to complete its work quickly and make public its results.

The Commission shares your concerns about the need for the utmost transparency and integrity in the energy futures markets, and we are devoting all available agency resources to fulfilling our mandate to protect and ensure the integrity of the commodity futures and options markets. Our dedicated staff works tirelessly each day to pursue this important mission, and we have a history of taking strong enforcement actions to punish market manipulation and fraud.

Congress and the Commission share the same goal of protecting American consumers and ensuring the integrity of our futures markets. The Commission will continue to work with Congress as we strive to improve our regulation and oversight. To that end, please find attached a set of detailed responses to the questions you posed in your May 27 letter. Please do not hesitate to contact us if we can be of further assistance, and thank you for your leadership and ongoing attention to these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Walt L. Lukken". The signature is fluid and cursive, with a long horizontal stroke at the end.

Walt Lukken

Off Shore Oil Trading

I understand that the CFTC receives on a weekly basis position data from the British Financial Services Authority (FSA) related to the West Texas Intermediate (WTI) crude contract traded on the ICE Futures Europe market –except during the last week of trading for an expiring contract, when such data is received daily.

1a. Are the data received from the British FSA relative to the ICE Futures Europe WTI contract incorporated into the CFTC's weekly Commitment of Traders reports for crude oil? If not, why not? Do any legal barriers exist to doing so?

The Commitments of Traders (COT) Reports are published to provide traders in the markets and the public with a degree of transparency regarding trading on the regulated futures exchanges. The CFTC does not publish COT Reports for market surveillance or for any regulatory or supervisory purposes. COT Reports date to 1962 when the Commodity Exchange Authority, the CFTC's predecessor, took what it called "another step forward in the policy of providing the public with current and basic data on futures market operations." Moreover, the Report's trader groupings – commercial and non-commercial – are only utilized for purposes of the COT Reports. The Commission's market surveillance staff evaluates the positions of all large traders to ascertain whether they constitute a threat to orderly trading, irrespective of how the trader may be classified for the purpose of publishing the COT Report.

The ICE Futures Europe position data that the Commission receives from the U.K.'s Financial Services Authority (FSA) is not incorporated into the Commission's COT Reports. There are a number of reasons why the Commission does not incorporate ICE Futures Europe position data into its COT Report for the New York Mercantile Exchange (NYMEX) West Texas Intermediate (WTI) contract. First, COT Reports provide a breakdown of commercial/hedging versus non-commercial/speculative activity in contracts traded on a Commission-designated contract market, and does not extend to positions maintained on foreign boards of trade such as ICE Futures Europe. Second, although the CFTC receives certain position data regarding the ICE Futures Europe WTI contract in connection with its surveillance of the related NYMEX WTI contract, the British regulatory authority does not categorize position and position holders in a manner that can be incorporated into a COT Report. Finally, the inclusion of ICE Futures Europe position data into COT Reports would be inconsistent with the terms of the Memorandum of Understanding (MOU) between the CFTC and the United Kingdom's Financial Services Authority (FSA) by which the CFTC receives this data. Article Five of the CFTC-FSA MOU states that information provided to the Commission under the MOU must be used "solely for the purpose of enabling or assisting it to exercise its regulatory oversight and supervisory functions." As mentioned, since COT reports are not published for regulatory purposes, the publication of this information would violate the current conditions upon which the CFTC receives this data from the FSA.

1b. The CFTC testified before the Committee last month that "there is no evidence that positions changes by speculators precede prices changes for crude oil futures contracts." Did the data underlying this analysis include position information from ICE Futures Europe WTI contract? If not, why not? If so, what is the breakdown of "commercial" vs.

“non-commercial” positions held in ICE Futures Europe WTI contracts from the period in which the contract was launched in 2006, to the present?

The Office of the Chief Economist (OCE) analysis of position changes and price changes involved only WTI contracts traded on the NYMEX. Position data from the NYMEX is reported in the CFTC’s Large Trader Reporting system (LTRS), which classifies trader positions by non-commercial and commercial categories and by sub-category within these broad groups. Data provided by ICE Futures Europe (which is analyzed by surveillance staff in the Division of Market Oversight) identifies market participants, but is not readily compatible with the categories and sub-categories that are reported in the LTRS. The ICE Futures Europe data is compatible with CFTC market surveillance activities, where market participant trading during the day can be monitored on both NYMEX and ICE Futures Europe. CFTC testimony on the relation between position changes and price changes, although based on NYMEX data alone, is premised on the fact that CFTC surveillance efforts have not uncovered evidence of traders using ICE Futures Europe to avoid reporting trades on NYMEX.

To improve our statistical test procedures, OCE is working to improve on existing data sets. A major effort is being made to enable us to conduct the tests described above using within-day trading activity and price changes. Similarly, when sufficient daily data for ICE Futures Europe positions do become available, OCE will move quickly to extend its analyses to include those data.

1c. Please quantify the volume of intraday trading in the ICE Futures Europe WTI contract since its launch in 2006, with respect to commercial versus non-commercial market participants.

The Commission receives position data regarding the ICE Futures Europe WTI contract pursuant to its MOU with FSA. Assuming that “intraday trading data” means records reflecting individual transactions throughout the trading day, the CFTC does not receive any intraday trading data from ICE Futures Europe that is broken down by commercial versus non-commercial traders. The Commission does not routinely receive this type of trading data for U.S. designated contract market (DCM) contracts either.

1d. As detailed more fully below, I am concerned that CFTC analysis performed relative to the role of “commercial” participants in commodity markets includes the activities of swap dealers – large institutional investors that appear to be classified along side physical hedgers in these markets, such as oil companies and airlines. Please quantify the share of swap dealer positions held in the ICE Futures Europe WTI contract, relative to the total share of open interest in the contract, the share of open interest for other “commercial” and “non-commercial” positions.

The U.K. FSA does not require exchanges to categorize its participants by commercial and non-commercial categories, and currently ICE Futures Europe WTI contract position data provided to the Commission pursuant to the CFTC-FSA MOU does not categorize positions in such categories. However, the CFTC recently reached an agreement with FSA to greatly enhance the

data the Commission receives with regard to crude oil contracts traded on U.K. regulated exchanges.

Since 2006, the FSA has provided the CFTC weekly trader information, and daily information in the final trading week, to facilitate rigorous oversight of trading in related contracts on U.S. and U.K. derivatives exchanges – specifically, the linked WTI Crude Oil contracts traded on both NYMEX and ICE Futures Europe. On May 29th the Commission announced an agreement to expand information sharing between the CFTC and FSA. The agreement includes:

1. Immediately implementing expanded information-sharing to provide the CFTC with daily large trader positions in the U.K. WTI crude oil contract;
2. Extending trader information sharing to provide crude oil large trader position data for all contract months in the WTI contract, not just the nearby months;
3. A near-term commitment to enhance trader information to permit more detailed identification of market end users;
4. A near-term commitment to provide improved data formatting so trading information can be seamlessly integrated into the CFTC's surveillance system; and
5. In addition to the established position management program that FSA currently requires of ICE Futures Europe, ICE Futures Europe will notify the CFTC when traders exceed position accountability levels, as established by U.S. designated contract markets, for WTI crude oil contracts.

This additional information will improve the Commission's surveillance capability for these cross-border products.

1e. Please quantify the volume of intraday trading in the ICE Futures Europe WTI contract attributable to swap dealers, since the contract's launch in 2006.

Assuming that "intraday trading data" means records reflecting individual transactions, the CFTC does not receive intraday trading data from ICE Futures Europe broken down by commercial versus non-commercial traders. Again, the Commission does not receive this type of trading data for U.S. designated contract market (DCM) contracts either.

1f. Is the position-related data the CFTC receives from the FSA sufficient to assess crude-related positions of any sovereign wealth funds participating in the ICE Futures Europe market? Please quantify this investment and describe any notable trends.

The Commission's staff has not observed any positions of sovereign wealth funds in the data received to date on the ICE Futures Europe crude oil contract. This observation is consistent with that for the NYMEX crude oil future, where sovereign wealth funds have not held reportable positions in that contract. If, in the future, sovereign wealth funds were directly to hold reportable positions, they would be identified in the Commission's large trader reporting for

NYMEX as well as in the large trader information received from the FSA for the ICE Futures Europe crude oil contract.

1g. Please provide the Committee with an account of any cross-border investigation and enforcement efforts that have spanned energy trading activities on both domestic markets and Foreign Boards of Trade. To the extent that such information might be governed by existing confidentiality requirements, rest assured the Committee will make arrangements to ensure this information remains private and confidential.

In December of 2007, the Division of Enforcement (DOE) launched a nationwide crude oil investigation into practices surrounding the purchase, transportation, storage, and trading of crude oil and related derivative contracts. Although the Commission ordinarily conducts enforcement investigations on a confidential basis, the Commission took the extraordinary step of disclosing this investigation because of unprecedented market conditions. All Commission enforcement inquiries are focused on ensuring that the markets are properly policed for manipulation and abusive practices. Although not made public, DOE has contacted numerous national and transnational companies involved in the crude oil markets as part of this investigation.

Certain of DOE's enforcement actions, most notably Amaranth, have involved natural gas trading desks located in Canada. Other actions filed by the Commission concern allegations relating to the establishment of fabricated exchanges purporting to sell futures and options in a variety of products including energy.

In addition, DOE has, either on its own initiative or in response to questions, complaints, or inquiries it received, opened investigations in several additional matters with cross-border components. These discrete investigations include allegations pertaining to: manipulative conduct involving crude oil trading in November-December 2005; the false reporting of natural gas trading for a certain month that included trading by an international entity; the pricing relationships for crude oil on a foreign exchange in December 2007; an instance of alleged false reporting and attempted manipulation of storage data for crude oil in December 2006; and an unregulated managed account advisor for forex and energy futures trading.

Over the past five years, in connection with our energy related enforcement matters DOE has made or received formal requests for international assistance to or from our foreign regulatory counterparts involving trading in crude oil, natural gas, heating oil, unleaded gasoline, and propane. The types of misconduct that were the subject of these requests included allegations concerning disruptive and/or potentially manipulative conduct, trade practice abuses including wash trading, and fraud. Most of the requests made by the CFTC were directed to our counterpart regulators in Canada and the United Kingdom.

The Swap Dealer Loophole

The Commission has repeatedly testified before Congress that the role of "non-commercial" participants in crude oil markets has not significantly changed during the current period of prolonged run-up in prices. As previously mentioned, this assertion

obscures the fact that swap dealers are, for purposes of CFTC analysis, classified along side physical hedgers as “commercial” participants in these markets. I found notable the CFTC’s acknowledgement in testimony before the Committee that “swap dealers now hold significantly larger positions in crude oil,” and that “this development has altered the traditional role of commercial traders” in the oil markets.

1a. Please explain the policy rationale for classifying swap dealers as “commercial” market participants, along side entities that participate in these markets as physical hedgers. Is there any current legal barrier to classifying these entities as “non-commercial” market participants for reporting purposes?

On May 29, 2008, the Commission announced several initiatives to gather additional information from the energy futures markets, including information from swap dealers. The Commission is using its existing Special Call authorities to immediately begin to require traders in the energy markets to provide the agency with monthly reports of their index trading to help the CFTC further identify the amount and impact of this type of trading in the markets. In addition, the Commission will develop a proposal to routinely require more detailed information from index traders and swaps dealers in the futures markets, and review whether classification of these types of traders can be improved for regulatory and reporting purposes. Lastly, the Commission will review the trading practices for index traders in the futures markets to ensure that this type of trading activity is not adversely impacting the price discovery process, and to determine whether different practices should be employed.

Under current practices, the classification of a trader as either commercial or non-commercial for purposes of the COT Report is described on the Commission’s website:

Commercial and Non-commercial Traders. When an individual reportable trader is identified to the Commission, the trader is classified either as "commercial" or "non-commercial." All of a trader's reported futures positions in a commodity are classified as commercial if the trader uses futures contracts in that particular commodity for hedging as defined in CFTC Regulation 1.3(z), 17 CFR 1.3(z). A trading entity generally gets classified as a "commercial" trader by filing a statement with the Commission, on CFTC Form 40: Statement of Reporting Trader, that it is commercially "...engaged in business activities hedged by the use of the futures or option markets." To ensure that traders are classified with accuracy and consistency, Commission staff may exercise judgment in re-classifying a trader if it has additional information about the trader’s use of the markets.

A trader may be classified as a commercial trader in some commodities and as a non-commercial trader in other commodities. A single trading entity cannot be classified as both a commercial and non-commercial trader in the same commodity. Nonetheless, a multi-functional organization that has more than one trading entity may have each trading entity classified separately in a commodity. For example, a financial organization trading in financial futures may have a banking entity whose positions are classified as commercial and have a separate money-management entity whose positions are classified as non-commercial.

In 1991, the Commission made a policy decision that swap dealers using futures to offset the risks associated with over-the-counter (OTC) commodity swaps were entitled, under Regulation 1.3(z), to a hedge exemption from Federal limits (which apply only to certain agricultural markets). The result of that determination was to classify these traders as commercials, which is consistent with how we define that term and entirely consistent with the view that commercials are traders that are holding futures for risk management and not with a view toward the market's price direction, as opposed to non-commercials, who are primarily taking positions with a view on the direction of prices. There is no legal barrier to classifying these traders as either commercial or non-commercial, and the classification for the COT Report holds no particular sway over how we view these traders for our internal surveillance purposes. While it is true that traders and the press avidly follows the weekly COT Reports for clues to changes in market sentiment among the major groups of market users, the Commission's surveillance staff does not rely on these classifications, or a given trader's individual classification, in determining whether that trader, or a group of traders, poses a threat to the market.

1b. The CFTC has testified before the Committee that “the non-commercial share of total open interest has increase marginally from 31 percent to 37 percent over the past three years” – a figure that excludes the trading activities of swap dealers. How has swap dealers’ share of total open interest grown over the past three years? How has the share of total open interest grown over the past three years when swap dealers are included in the “non-commercial” category?

The Office of the Chief Economist has been tracking the market share of open interest across each category and sub-category in our Large Trader Reporting System (LTRS). Testimony has been based on this analysis in the crude oil markets. From April 2005 to April 2008, swap dealer market share has grown from 23.5 percent to 31.7 percent of total open interest. Using this updated data (the testimony referenced in the question was based on data ending in Fall 2007), non-commercial market share grew from 34 to 36 percent of total open interest during the same period. If swap dealer open interest is included in the non-commercial category, the market share of this combined group has grown from 57.4 to 67.9 percent from April 2005 to April 2008.

It is important to note that these figures aggregate long positions and short positions, but they do not net long positions against short positions. In other words, these figures are the sum of the positions of market participants who would profit from a decline in price and the positions of those who would profit from a rise in price. Thus, these figures alone are insufficient to suggest an upward pressure on price.

1c. Please explain the rules related to “hedging exemptions,” which may allow market participants to exceed position limits for trading crude oil. To what extent are swap dealers eligible for such exemptions, and how often have such exemptions been granted in crude oil since 2006? Similarly, please quantify the extent to which market participants granted hedging exemptions for trading the WTI contract on the New York Mercantile Exchange hold additional positions in the ICE Futures Europe WTI contract. (While I understand a single corporate entity may have different subsidiaries or affiliates active in each market, please provide this analysis in a manner that aggregates such positions.)

The Commission's policy has been to require exchanges, as part of their self regulatory responsibilities, to set speculative limits (or adopt position accountability provisions), subject to Commission approval or review of the respective rules. Accordingly, the Commission has not specified speculative position limits for energy commodities. Any violations of speculative limits set by a designated contract market are a violation of the Commodity Exchange Act, and the Commission has taken enforcement action to prosecute violations. The oversight principle whereby designated contract markets set speculative limits was endorsed in the Commodity Futures Modernization Act of 2000 in designated contract market Core Principle 5, which requires exchanges to set speculative limits or accountability provisions as appropriate.

NYMEX uses position accountability for its WTI crude oil contract, except for the position limits that apply during the last three days of trading. According to NYMEX staff, since 2006, NYMEX has issued a total of 117 hedging exemptions from position limits in their WTI crude oil market. Specifically, NYMEX issued 25 hedging exemptions based exclusively on bona fide hedge exposure (as defined in Commission Regulation 1.3(z)) to eleven different companies, 44 hedging exemptions based on a combination of hedge/swaps to 24 different companies, and 48 hedging exemptions based on exclusively swap exposure to 18 different companies. To receive an exemption from NYMEX's speculative limits, a trader must first file a formal application. If the request is granted, NYMEX stipulates a maximum allowable position for that trader, as there are no unlimited exemptions. In filing the application with NYMEX, the trader must supply details of the underlying commodity or swap exposure, details of the risk management structure of the firm, a summary of the trader's prior year's exposure, a list of the traders employed, and audited financial statements (or financials otherwise acceptable to NYMEX). After a review of the data submitted, NYMEX assesses the ability of the market to absorb the hedge position requested and determines if it is too big for the market to digest. NYMEX conducts an analysis to ascertain if the requested exemption could represent a position that, by size alone, could be disruptive. If the answer is "yes," the exemption at the level requested is not granted. NYMEX may then suggest a lower level that would be acceptable based upon its historical review of open interest, volume, and other data for that market. Finally, NYMEX also noted that it does not routinely get information in the hedge exemption process detailing traders' ICE Futures Europe WTI positions.

1d. Please quantify the volume of intraday trading in NYMEX WTI crude contract since 2006, with respect to commercial versus non-commercial market participants, and swap dealers.

The trade data that the Commission receives from NYMEX and other futures exchanges is not identified or classified by type of market participant. Therefore, the Commission does not have the data to answer the question. However, the Commission is currently in the process of upgrading its automated trade surveillance system (TSS). One initiative that is being pursued is requiring firms to identify account numbers on a regular basis and to integrate this information into TSS. Integration of this data into TSS will require additional financial and human resources. Once the Commission has completed this goal and is able to identify the owners of trading accounts in TSS, staff will have the necessary data to break down the volume of intraday

trading in any exchange contract, by commercial versus non-commercial market participants, and by swap dealer.

Transparency Requirements and Conflicts of Interest

Since January 2007, the CFTC has published a supplemental, weekly “Commitment of Traders” report detailing positions of index traders with respect to 12 agricultural commodities. In announcing the reporting initiative, the CFTC noted that the new report would incorporate “... positions of managed funds, pension funds and other institutional investors that generally seek exposure to commodity prices as an asset class in an unleveraged and passively-managed manner,” along with the “positions of entities whose trading predominantly reflects hedging of over-the-counter (OTC) transactions involving commodity indices – for example, swap dealers holding long futures positions to hedge short OTC commodity index exposure opposite institutional traders such as pension funds.”

1a. Why has the CFTC failed to take similar steps to increase transparency with respect to energy commodities through publication of a supplemental Commitment of Traders report – particularly with respect to crude oil?

In 2006, when the Commission determined to publish a COT Supplemental Report reflecting the aggregate futures and option positions of non-commercial, commercial, and index traders in various agricultural commodities, it also closely studied whether it would be feasible to publish similar data for energy and metals markets. At that time, the Commission found that there would be significant problems accurately classifying commodity index trading activity in energy and metals futures markets and concluded that a similar supplemental report for such trading would be potentially misleading and would not enhance market transparency.

The Commission’s conclusion was based on an evaluation of the large trader data available to the Commission, and in particular on an assessment of the accuracy with which this data could be parsed out, for firms engaged in commodity index trading, between such index trading and other unrelated trading activity. In the case of energy and metals markets, there are alternative U.S. and non-U.S. exchanges and a multitude of OTC markets and derivatives products. Many swap dealers, for instance, in addition to their commodity index-related OTC activity, enter into other OTC derivatives transactions in individual commodities, both with commercial firms hedging price risk and with speculators taking on price risk. In addition, some swap dealers are very actively engaged in commercial activity in the underlying cash market, such as a physical merchandising or dealing activity. As a result of these other activities, the overall futures positions held by these energy and metals traders in CFTC-regulated markets do not necessarily correspond closely with their hedging of OTC commodity index transactions. Indeed, placing the futures positions of such swap dealers in an index trader category in a supplemental report would not accurately reflect commodity index trading activity for energy and metals markets.

Notably, the Commission is continuing to evaluate steps that it can take to improve transparency for energy markets index trading activity and it announced on May 29th that it would be using its existing special call authorities to immediately begin to require traders in the energy markets to

provide the agency with monthly reports of their index trading to help the CFTC further identify the amount and impact of this type of trading in the markets. Based upon this information, the Commission plans to develop a proposal to routinely require more detailed information from index traders and swaps dealers in the futures markets, and to review whether classification of these types of traders can be improved.

1b. Please describe any technical or legal barriers to including in any such supplemental Commitment of Traders report data relative to positions in the ICE Futures Europe WTI contract.

As indicated above, the Commission believes that the CFTC-FSA MOU does not permit the use of ICE Futures Europe WTI position data for COT reporting purposes. As noted earlier, COT reports are primarily used by traders and those in the public looking to discern trends in the markets, but it is not utilized by the CFTC for regulatory purposes.

2. Testimony and various press accounts have recently noted the acquisition of petroleum storage capacity on the part of institutional investors active in energy commodity trading markets. Such trends lead to concerns regarding potential market manipulation strategies. We note that current CFTC regulations (17 CFR Part 19) require that, with respect to certain agricultural commodity markets, entities that exceed speculative position limits must file reports with the Commission outlining their underlying cash positions. Do any such similar reporting requirements apply with respect to energy commodities? If not, why not?

Nothing similar applies to energy markets because the purpose of the Part 19 reports is to assist the Commission in monitoring compliance with Federal speculative position limits. The CFTC does not set Federal speculative limits for energy commodities. However, core principle 5 for designated contract markets requires NYMEX to monitor compliance with its position limit and accountability rules, as described in the answer to 1c above.

3. Do any conflict-of-interest or insider trading-related regulations apply specifically to commodity market analysts or firms, analogous to those put in place with respect to securities as a result of the Sarbanes-Oxley Act of 2002 (P.L. 107-204)? If so, please describe such regulations – particularly as they apply to commodity market analysts and/or traders employed by investment banks with active proprietary trading operations.

Insofar as CFTC registrants are covered by the Sarbanes-Oxley Act of 2002, they are fully subject to that law's requirements with respect to securities. And securities law insider trading prohibitions apply to trading in security futures products, which are treated as both securities and futures under the Commodity Futures Modernization Act of 2000.

Unlike securities laws, though, the Commodity Exchange Act generally does not subject commodity traders to an affirmative obligation to disclose nonpublic information that may be material to the pricing of a transaction or, in the absence of such disclosure, to abstain from trading. This distinction in the law reflects the fundamental differences between securities and futures markets. The securities markets exist for capital formation purposes, and issuers and

corporate insiders have information advantages over investors in publicly-traded securities. The futures markets, by contrast, are risk-shifting markets, and market participants generally have equality of access to information about publicly-traded commodities. Hedging, a principal reason that futures markets exist, itself may be considered a form of insider trading insofar as the hedger takes a position in the futures market to hedge a price risk incident to an undisclosed past or future transaction.

Accordingly, the insider trading prohibitions of the Commodity Exchange Act apply only to employees, members of the governing board, and members of any committee of a registered entity (*e.g.*, an exchange or clearing organization) or registered futures association (*i.e.*, National Futures Association). Such persons are prohibited from trading for their own account, or for or on behalf of any other person, in futures or options on futures based on material nonpublic information obtained through special access related to the performance of their duties, and from disclosing such information for any purpose inconsistent with the performance of their official duties (and from trading based on material nonpublic information that they know was obtained in violation of these prohibitions). Violation of these prohibitions is a felony punishable by fine and/or imprisonment. *See* 7 U.S.C. § 13(e) (formerly 7 U.S.C. § 13(f), recently renumbered by the CFTC Reauthorization Act of 2008). CFTC Rule 1.59, 17 C.F.R. § 1.59, contains the same prohibitions.