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1994-2008

Request date: 29-July-2014

Released date: 18-September-2014

Posted date: 27-October-2014

Source of document: Freedom of Information Act Request
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September 18, 2014

RE: 14-00137-FOIA
Various OIG Reports

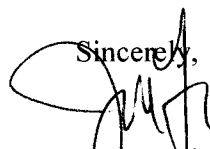
This is in response to your request dated July 29, 2014, under the Freedom of Information Act seeking access to various OIG Reports. In accordance with the FOIA and agency policy, we have searched our records, as of July 29, 2014, the date we received your request in our FOIA office.

We have located 138 pages of responsive records. I am granting partial access to and am enclosing copies of, the accessible records. Portions of these pages fall within the exemptions to the FOIA's disclosure requirements, as explained below.

I am denying access to personal information found in the records. This information is exempt from release under FOIA Exemption 6, 5 U.S.C. § 552(b)(6), because individuals' right to privacy outweighs the general public's interest in seeing personal identifying information. *See The Lakin Law Firm v. FTC*, 352 F.3d 1122 (7th Cir. 2003).

If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 8th Floor, 1155 21st Street, N.W., Washington, D.C. 20581, within 30 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.

If you have any questions about the way we handled your request, or about our FOIA regulations or procedures, please contact Linda J. Mauldin at 202-418-5497.

Sincerely,


Joan E. Fina
Assistant General Counsel

An Investigation of Allegations of Wrongdoing
In Connection with the Release of the
Interim Report on Crude Oil Prepared by the
Interagency Task Force on Commodity Markets

REPORT OF INVESTIGATION

Prepared by the
Office of the Inspector General
Commodity Futures Trading Commission

September 11, 2008

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dated June 9, 2008

APPENDIX V Letter from the Acting Chairman to the United States Senate
dated July 8, 2008.

EXECUTIVE SUMMARY

This report presents the results of an investigation of allegations of wrongdoing regarding the Interim Report on Crude Oil (Interim Report) issued by the Interagency Task Force on Commodity Markets (ITF) on July 22, 2008. Four U.S. Senators made the following allegations:

- The authors and contributors of the Interim Report on Crude Oil knowingly used flawed data that was inaccurate (and not the government's best available data)
- The Interim Report analyzed the crude oil markets using flawed analytical methods
- The Commodity Futures Trading Commission (CFTC) timed the release of the Interim Report improperly in order to influence a Senate vote

To investigate these allegations, we interviewed 44 individuals, including officers and employees of CFTC, the Treasury Department, the Energy Information Agency, the Federal Reserve Board, the Department of Agriculture, the Securities and Exchange Commission and the Council of Economic Advisers. We reviewed multiple drafts of the Interim Report, relevant Email, Congressional testimony, proposed legislation and other materials. We reviewed the analyses used in the Interim Report.

Our report concludes the evidence does not support the allegations. With regard to data accuracy, we conclude based on witness interviews and documentary evidence that the Interim Report used the most complete and accurate information available. During preparation of the Interim Report, a significant correction to CFTC market data necessitated amendments to the draft and analysis. However, all necessary revisions were completed prior to release of the Interim Report. In addition, we conclude the data used to compile the Interim Report was not incomplete. Certainly additional information could be valuable, and the Interim Report disclosed that additional market information recently requested by the Agency would be analyzed in a future report scheduled for release in September.

We also conclude that the Interim Report did not employ a flawed analytical method. The analytical method employed in the Interim Report has been widely accepted for decades, and any caveats or limitations were fully disclosed in the Interim Report.

Finally, we conclude that the Interim Report was most likely not released in order to influence a Senate vote. While the release date did closely precede a Senate vote, on balance it appears more likely that the Interim Report had been previously scheduled for release in mid-July, weeks before the Senate vote was scheduled. The facts indicate a coincidence more than a contrived event.

While we conclude the allegations are not supported, we also conclude that a CFTC Special Announcement issued on July 18, 2008, should have disclosed more. The Special Announcement briefly disclosed a position reclassification in energy futures, and was accompanied by parallel Commitment of Traders (COT) Reports giving before and after views of the position classifications. We believe the July 18, 2008 Special Announcement should have stated in narrative form the same information disclosed to market professionals through the COT Reports regarding the size of the reclassification and the affected categories. In addition, the Special Announcement should have explained that all future studies would use the revised data, that the circumstances of the reclassification would be closely reviewed, and that any necessary amendments to prior testimony, publications, studies or presentations would be announced.

PART ONE

INTRODUCTION

I. Allegations and Scope of Investigation.

In August 2008, the CFTC Office of the Inspector General (OIG) began an investigation of allegations concerning the Interim Report issued by the ITF on July 22, 2008. The allegations were received from four United States Senators ("the Senators").¹ The Senators alleged that the Interim Report² contained inaccurate, incomplete or flawed information. Specifically, the Senators alleged that the report was issued before CFTC received all information necessary to complete a comprehensive analysis of the crude oil market, and that the report was issued based on incorrect large trader data compiled by CFTC. In addition, the Senators requested an investigation into whether the Interim Report was based on flawed analysis; and whether it was timed improperly to influence a Senate vote on pending legislation.

II. Methodology of the Investigation

During the course of our investigation, we interviewed 44 individuals,³ with follow up discussions in some instances. Individuals interviewed included:

- The Acting Chairman and the three current Commissioners at CFTC⁴
- Michael Loesch, Chief of Staff, CFTC
- Selected staff in the Offices of the Chairman and Commissioners, CFTC
- Richard Shilts, Director, Division of Market Oversight (DMO), CFTC
- (b)(6) (ret.), Deputy Director, Market Surveillance Section, DMO, CFTC

¹ See Appendix I.

² Interagency Task Force on Commodity Markets, Interim Report on Crude Oil, July 22, 2008, <http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/itfinterimreportoncrudeoil0708.pdf>.

³ Interviews were conducted in person, by phone, and by video conference.

⁴ CFTC refers to the headquarters office in Washington D.C., unless otherwise noted. "Staff" includes supervisory personnel below the Deputy level.

- Staff in the Market Surveillance Section, Headquarters and Central Region, DMO, CFTC
- Staff in the Market Information Group, Eastern Region, Market Surveillance Section, DMO, CFTC
- Staff in the Market Surveillance Group, Eastern Region, Market Surveillance Section, DMO, CFTC
- Jeffrey R. Harris, Chief Economist, CFTC
- Staff in the Office of the Chief Economist (OCE), CFTC
- Terry Arbit, General Counsel, CFTC
- Ianthe J. Zabel, Director, Office of External Affairs, CFTC
- Staff in the Office of External Affairs, CFTC
- Michael R. Baye, Chief Economist and Director of the Bureau of Economics, Federal Trade Commission.
- Floyd D. Gaibler, Deputy Under Secretary for Farm And Foreign Agricultural Services, US Department of Agriculture
- James Overdahl, Chief Economist, Securities and Exchange Commission
- [REDACTED], Associate Director for Risk Analysis, Microstatistics, and Financial Reports, Federal Reserve Board
- [REDACTED], Deputy Associate Director, Division of International Finance, Federal Reserve Board
- Stephen Harvey, Director, Office of Oil and Gas, Energy Information Agency, Department of Energy
- [REDACTED], Assistant Secretary for Economic Policy, U.S. Department of Treasury
- [REDACTED], Acting Deputy Assistant Secretary, Microeconomic Analysis, U.S. Department of Treasury
- Staff of the Council of Economic Advisers

In addition to these interviews, we reviewed documentary evidence including:

- Multiple drafts of the Interim Report
- Multiple CFTC Form 40 Reports-Statement of Reporting Traders (Form 40)
- Relevant Email traffic of CFTC staff
- Press releases, Congressional testimony and other public communications issued by CFTC
- An audio tape of Confidential CFTC Surveillance Briefing to CFTC Commissioners on July 18, 2008
- Related economic studies and information

III. Organization of this Report

This report is organized into seven parts. Part Two gives background information regarding the creation of the Interagency Task Force, as well as a timeline leading up to the release of the Interim Report, including the reclassification of futures and options on futures positions in crude oil that occurred in July 2008. Part Three describes the allegations that were received and will be addressed in the report. Part Four addresses the allegation that the Interim Report was based on information that was inaccurate and not the best available to the CFTC. Part Five addresses the allegation that the Interim Report was based on flawed analyses and incomplete data. Part Six addresses the allegation that the Interim Report was timed to coincide with a Senate vote. Part Seven summarizes the findings and conclusions.

PART TWO BACKGROUND

In May 2008, CFTC announced it would issue Special Calls to obtain information from swaps dealers and commodity index traders regarding trading in energy futures markets.⁵ The CFTC also described the Special Calls in public statements issued in June and July 2008.⁶ The CFTC stated it would gather this information for the following purposes:

- 1. Improve Transparency for Energy Markets Index Trading Activity:** The Commission will use 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.
- 2. Review of Trader Reporting and Classification:** The Commission will 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 for regulatory and reporting purposes.

⁵ CFTC Special Call authority and processes are described in detail at 17 CFR Chap. 1 Part 21.

⁶ See Fenton, J, "Presentation for CFTC's Energy Markets Advisory Committee Meeting," http://www.cftc.gov/stellent/groups/public/@newsroom/documents/speechandtestimony/event061008_fenton.pdf, and the Opening Statement of CFTC Acting Chairman Walt Lukken Before the Agricultural Advisory Committee, July 29, 2008, available at <http://www.cftc.gov/stellent/groups/public/@newsroom/documents/pressrelease/lukkenaacstatement072908.pdf>.

3. Examine Trading Practices for Index Traders: 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.⁷

CFTC announced the formation of the ITF on June 10, 2008.⁸ The ITF would include representatives of CFTC, the Federal Reserve, the Department of the Treasury, the Securities and Exchange Commission, the Department of Energy and the Department of Agriculture.⁹ The CFTC stated:

High commodity prices are posing a significant strain on U.S. households and the announced Interagency Task Force will aid public and regulatory understanding of the forces that are affecting the functioning of these markets. The Interagency Task Force will strive to complete its work as expeditiously as possible, and will make public the results.¹⁰

The ITF met for the first time on June 12, 2008. After June 12, the ITF determined to issue an interim report on crude oil. Subsequent telephone conferences of the ITF took place, including phone conferences on June 30, July 7, and July 10, 2008.

On July 10, 2008, the Acting Chairman announced the intent of the ITF to issue an interim report on crude oil “in the coming weeks.”¹¹

On July 15, 2008, Senators Reid, Durbin, Schumer, Dorgan, and Murray introduced Senate Bill 3268, titled the “Stop Excessive Energy Speculation Act of 2008.”¹² The bill was ordered read the first time and placed on Senate Legislative Calendar under Read the First Time.¹³

On July 17, 2008, Senate Bill 3268 was read the second time, and placed on the Senate Legislative Calendar under General Orders. A motion to proceed to consideration of measure, and a cloture motion on the motion to proceed to the measure, were both presented in the Senate.

On July 18, 2008, CFTC posted to their website a “Special Announcement” stating that “the Commission staff has reclassified certain positions in the energy futures

⁷ The CFTC Press Release may be found here:

<http://www.cftc.gov/newsroom/generalpressreleases/2008/pr5503-08.html>

⁸ The CFTC Press Release may be found here:

<http://www.cftc.gov/newsroom/generalpressreleases/2008/pr5508-08.html>

⁹ The Interim Report also listed the Federal Trade Commission as a participant. Interim Report, *supra*, p.1.

¹⁰ See fn.7.

¹¹ <http://www.cftc.gov/stellent/groups/public/@newsroom/documents/speechandtestimony/opalukken-46.pdf>.

¹² http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s3268pcs.txt.pdf.

¹³ All legislative information regarding S3268 is obtained from the Library of Congress website, available at: <http://thomas.loc.gov>.

and options markets from the Commercial category to the Noncommercial category,” that separate COT Reports with and without the reclassification were being posted for that week, and that the following week CFTC intended to publish revised historic data.¹⁴

On July 21, 2008, a motion on Senate Bill 3268 to proceed to measure was considered in the Senate.

On July 22, 2008, a motion on Senate Bill 3268 to proceed to measure was considered in the Senate, and Cloture was invoked in the Senate at 11:28 am by a Ye-Nay Vote of 94-0. The CFTC posted the Interim Report on its website at approximately 4:00 p.m., along with a press release.¹⁵

On July 25, 2008, a second cloture motion on Senate Bill 3268 failed by a vote of 50-43.

PART THREE **DESCRIPTION OF ALLEGATIONS**

On August 14, 2008, Senators Cantwell, Dorgan, Nelson, and Wyden issued a request to Inspector General Lavik to conduct an investigation into matters related to the release of the Interim Report.¹⁶ In their letter, the Senators made the following statements and raised the following concerns:

- “Why was the report released after CFTC staff had determined that critical information upon which it was based was inaccurate”
- “The unannounced and unexpected Interim Report was released just a few days before a key Senate vote on a pending bill related to speculation in the oil markets. The report, which specifically addressed speculation, appears to have been created and released to influence that Senate vote.”
- “[W]e request that you investigate the process by which the Interim Report was prepared and released, including but not limited to the decision on timing of the public release, the decision to characterize the information contained in the report not only as accurate, but as the best available data, and to identify the individuals involved in making these decisions.”
- “We also ask you to investigate and determine whether other flawed data or analyses were used in preparing the Interim Report.”

¹⁴ <http://www.cftc.gov/marketreports/commitmentsoftraders/index.htm>.

¹⁵ See <http://www.cftc.gov/newsroom/generalpressreleases/2008/pr5520-08.html>.

¹⁶ See Appendix I.

The Senators did not allege violations of specific criminal or civil statutes or regulations. We therefore conducted this investigation as an administrative investigation from the outset.

PART FOUR
**EVIDENCE, ANALYSIS AND CONCLUSIONS REGARDING
THE ACCURACY OF DATA USED IN THE INTERIM REPORT**

I. Reclassification of Crude Oil Positions for the Commitment of Traders Report

In the August 14, 2008 letter, the four Senators focused on the July 18, 2008 reclassification of a large position in crude oil – from “commercial” to “non-commercial” – as the basis for their concern that the report was based on inaccurate information. Our interviews with CFTC staff and management revealed the following chain of events.

Following the Acting Chairman’s May 2008 announcement that Special Calls would be used to extract information from swaps dealers and index traders, CFTC staff in DMO issued over 40 Special Calls to 32 entities. As a result of that inquiry, during the week of July 14, DMO Market Surveillance staff in the Central and Eastern Regions learned that crude oil futures positions (as well as option on futures) that were the subject of a Special Call were not properly categorized. This information came to light when representatives of the Special Call recipient contacted CFTC to clarify its status.

During the first two days of that week, DMO staff and management consulted with representatives of the Special Call recipient. The classification error appeared to stem from notations on the Form 40s¹⁷ filed by the entity or entities involved. The written notations on the Form 40s dated back several years, and it appears the notations were appropriate, or non-consequential, for several years. In 2007, however, relevant account activity gave rise to a re-examination of the Form 40s. The Director of DMO and the Deputy Director for Market Surveillance both stated that the Form 40s should have been re-evaluated, and the classification changed, in July 2007. Because the Form 40 notations were idiosyncratic, the error appears to be unique and not likely to be repeated. The Director of DMO stated they will be studying the situation and implementing appropriate modifications to avoid similar situations in the future.

DMO staff and management understood the size of the position reclassification and the gravity of the situation.¹⁸ Those expressing an opinion indicated it was the largest position reclassification they could remember.¹⁹

¹⁷ <http://www.cftc.gov/stellent/groups/public/@forms/documents/file/cftcform40.pdf>.

¹⁸ One DMO manager stated that the events of that week were like having a root canal every day.

¹⁹ DMO management and staff involved in this matter and interviewed for this report had, on average, 23 years experience each at CFTC.

On Wednesday, July 16, DMO managers met with the Acting Chairman and members of his staff in Washington to discuss the situation. The Chief Economist for CFTC, who was overseeing the production of the Interim Report on Crude Oil, also attended, as did the General Counsel and staff from the CFTC Office of External Affairs.²⁰ DMO managers stated that they advised the Acting Chairman to do the following:

- Correct the classification error in the COT Reports as soon as possible in order to avoid any later allegation of attempted concealment of the information.
- Issue side-by-side corrected and uncorrected COT Reports for the next scheduled COT report release date. COT Reports are regularly posted to the CFTC website on Friday. Side-by-side COT Reports would provide the most complete information.
- Notify the public that the change resulted from a reclassification of positions. This would be necessary in order to prevent any possible misconception that one or more new large traders had entered or exited the market.
- Refrain from disclosing the identity of the entity or entities associated with the reclassified positions due to the disclosure restrictions found at Section 8 of the Commodity Exchange Act.²¹
- Release revised COT Reports to correct the reclassification error going back to when the incorrect classification began. The revised COT Reports could not be completed before Friday, July 18. DMO staff recommended issuing the revised historical COT Reports the following Friday, July 25, 2008.

The recommendations made by DMO management on Wednesday, July 16 were in line with the views expressed by DMO staff. The Acting Chairman shared the concerns raised by DMO management and staff regarding the gravity of the situation and the importance of publishing corrected COT Reports as soon as practicable. The Acting Chairman decided to follow the recommendations of DMO management.

The revised COT Reports were posted on the CFTC website as planned on July 18 and July 25, 2008.²² The July 18 COT Reports were posted along with a Special Announcement to explain the circumstances surrounding the reclassification.²³

²⁰ The Office of External Affairs “acts as the CFTC’s liaison with news media, producer and market user groups, educational and academic groups, and the general public, provides information about the CFTC, and spearheads customer protection initiatives.” <http://www.cftc.gov/aboutthecftc/index.htm>.

²¹ Section 8 of the Commodity Exchange Act, 7 USC 12, restricts the disclosure of, among other things, position data by futures traders. The CFTC Office of the General Counsel interprets section 8 of the Act to prohibit disclosure of the reclassified trader in this instance, and we have found no authority to indicate that such interpretation of section 8 is incorrect.

²² See Appx. I. The OIG reviewed the logs of these postings and confirmed these dates.

Discussions concerning how to draft the Special Announcement were largely addressed at management level in DMO. At the July 16 meeting, DMO management recommended announcing the reclassification in the same manner that earlier reclassifications had been announced by CFTC. The only difference between this reclassification and past reclassifications would be the publication of side-by-side COT Reports, with publication of historical revised COT Reports to follow.

Prior reclassification notices were assembled and reviewed,²⁴ and an old announcement of a position reclassification from commercial to non-commercial was used as a model. Drafts were prepared by DMO management and reviewed and approved by senior agency officials and the Acting Chairman. Staff level employees offered proofreading and editing assistance.

The Acting Chairman, his Chief of Staff and legal counsel, and DMO management agreed that they should be “as transparent as possible,” but should “avoid over politicizing or under politicizing” the announcement. A manager in DMO stated that issuing a more explanatory statement was discussed, but it was felt that any statement other than the usual CFTC reclassification statement could cause problems, such as accusations of trying to “spin” the data, or the inadvertent publication of sufficient information to permit identification of the entity or entities involved.

It appears that all agreed that following CFTC precedent in this regard was the best way to address the situation and inform the public regarding the reclassification. Everyone interviewed expected the Special Announcement to generate media attention. The Acting Chairman made the final decision regarding how to present the reclassification, and briefed the other CFTC Commissioners on the situation at a closed surveillance briefing held on July 18, 2008.

II. Effect of the COT Position Reclassification on the Interim Report

The OCE did not use COT Reports to construct the Interim Report.²⁵ Instead, OCE staff drew from confidential CFTC market data collected for surveillance purposes. Market surveillance data maintained by CFTC allows for more precise categorization of commercial and non-commercial positions. The OCE drew from sub-categories for commercial participants including commercial producers, commercial manufacturers,

²³ In addition, the Acting Chairman directed the Office of External Affairs to notify the appropriate members of Congress, consistent with section 8 of the Commodity Exchange Act. Staff in the Office of External Affairs stated that notice was given by telephone during that week.

²⁴ The OIG reviewed a listing of all reclassification announcements produced by DMO and given to the Acting Chairman during his deliberations on this matter.

²⁵ In fact, the COT Reports (which are not required by law or regulation) are not used by CFTC for market surveillance. A description of the CFTC Market Surveillance Program may be found at: <http://www.cftc.gov/industryoversight/marketsurveillance/cftcsurveillance.html>. A description of COT Reports may be found at http://www.cftc.gov/marketreports/commitmentsoftraders/cot_about.html.

commercial dealers and swap dealers; and drew from sub-categories for non-commercial participants including hedge funds, floor brokers and traders.²⁶

The Chief Economist attended the Wednesday, July 16, 2008, meeting and was briefed on the reclassification. Concerns developed over how the reclassified data might impact the Interim Report. All agreed that publishing the Interim Report without updating the data to reflect the position reclassification, and instead waiting to include the new data in the final report, would be unacceptable. The Chief Economist and the Acting Chairman agreed that the analysis previously prepared for the draft Interim Report would have to be prepared a second time with the corrected data. In addition, as the analysis contained in the draft Interim Report was based on studies previously prepared and presented outside the Agency, any errors in earlier publications or presentations would require public correction.

During the July 16 meeting, the Chief Economist sent this Email to three OCE staff: "Guys – Pls don't leave before I get back to the ofc. I should be back down by 5:30." Upon returning to the office, the Chief Economist met with the Deputy Director for Market Surveillance, OCE staff and Market Surveillance staff. The group determined how to execute the Acting Chairman's decision to issue the Interim Report with the revised data.

It was decided that the database already obtained by OCE from DMO for purposes of creating the Interim Report would be altered as appropriate to accurately account for the reclassified positions. Because OCE already had the database, the only information they needed was the relevant trader identification codes, the relevant contracts, and the corrected position classifications. As described by Market Surveillance staff, OCE just "puts in the I.D. and switches the classification, and does it for the length of time that is called for."²⁷ After the database was corrected, OCE staff would perform its analysis a second time.

The others left for the day and one OCE staff member stayed on to reclassify the positions and rerun all analysis contained in the draft Interim Report. He finished "running the numbers" well after midnight, and returned the next morning to oversee the creation of new charts as well as necessary amendments to the text of the report. The Chief Economist was at the office before 8 am on July 17th to review the results. The results were also reviewed by other staff in OCE.

In the end, the new data revealed a quantitative change but not a qualitative change. In other words, the numbers changed, but not enough to alter the results. One

²⁶ Interim Report, *supra*, p.21.

²⁷ This procedure represented a departure from the usual practice. The Chief Economist indicated that, under ordinary circumstances, OCE staff will download revised market surveillance data each time an analysis is repeated. In this instance, due to time constraints, DMO staff and OCE staff determined to revise the data already obtained by OCE.

OCE staff member stated he was “somewhat surprised” at this result, but it demonstrated the strength of the conclusions.

OCE staff provided the CFTC OIG with relevant Email documenting the data revision, as well as drafts of the Interim Report showing charts and text before and after the data revision. OIG examined the revised econometric tests.²⁸

IV. Analysis and Conclusions

All statements and documentary evidence obtained in this investigation point to the conclusion that the Interim Report on Crude Oil was published with the most accurate market information available to the CFTC at the time. In light of the position reclassification published on July 18, 2008, OCE corrected their data set, repeated their analyses, and reevaluated their conclusions. The new results were published in the Interim Report. While we believe the four Senators raised valid concerns in this regard, the Interim Report appears accurate as of its release date.

The Senators’ concerns and accusations were valid due to the manner in which the reclassification was presented to the public. We believe fuller disclosure was required in this situation.

To be sure, it is to the credit of CFTC management and staff that the revised COT Reports were ready for publication within days of the discovery and determination to reclassify the relevant futures positions. However, the COT Reports are not plain to the layman. On July 18, 2008, both the revised and unrevised versions of the relevant COT Reports (“short version”) contained 19 pages of nearly identical tables.²⁹ Each table was labeled with the relevant futures contract. Position data was identified as “commercial” or “non-commercial” and further broken down as long and short and, for non-commercial positions, “spreads.” Long and short non-reportable positions were also displayed. The July 18, 2008 reports looked no different than COT Reports posted to the CFTC website on any given Friday. Detailed instructions titled “How to Read the Commitments of Traders Reports” are available on the CFTC website,³⁰ and while we believe the instructions are clear and informative to any market professional, we believe they would not assist a layman to understand the import of the two sets of COT Reports published on July 18, 2008.

In addition to the before-and-after COT Reports, the CFTC published the following Special Announcement on the COT Reports webpage:

²⁸ We did find a minor typographical error in the chart published in the Interim Report at page 28. We alerted OCE staff to the error, which was insignificant.

²⁹ See Appendix II.

³⁰ http://www.cftc.gov/marketreports/commitmentsoftraders/cot_about.html.

Special Announcement – July 18, 2008

Effective with this week's Commitments of Traders (COT) report, the Commission staff has reclassified certain positions in the energy futures and options markets from the Commercial category to the Noncommercial category. As described in the Backgrounder for the COT report, reportable traders provide information to the Commission, on a market-by-market basis, on whether they use a market for commercial purposes, i.e., use a market for hedging or risk-management. This information is normally the basis used for determining a trader's classification as a commercial trader in the COT report. However, Commission staff periodically evaluate these classifications and will change a classification in light of new or additional information. In this instance, information provided as part of a Commission Special Call to select market participants improved the Commission's knowledge of certain business operations, resulting in the reclassification of certain positions because commercial hedging or risk management activities did not constitute a significant part of the overall trading activity.

In the interest of transparency and for the purpose of identifying the impact of these changes, as the COT report is released today, we will also publish additional tables that show data for this week's COT Reports for energy markets, that reflect how they would have looked had these updated classifications not been made. Those tables are accessible through these links: Futures Only; Futures and Options Combined. The CFTC also intends to publish revised historical COT data for these markets next week.³¹

We understand from interviews and other evidence reviewed in the course of this investigation that the reclassification of positions announced on July 18 resulted in, among other things, a shift of approximately 10% of the open interest in crude oil from the classification "Commercial" to the classification label "Non-Commercial, Spreads." We also understand that this information would be clear to any experienced reader of the COT Reports.³²

Interest in COT Reports is usually limited to a specialized audience; however, this was a significant reclassification. Everyone interviewed realized this was a serious matter – the largest reclassification that could be recalled – and that it would likely generate public attention. In addition, this was the first time CFTC published revised

³¹ <http://www.cftc.gov/marketreports/commitmentsoftraders/index.htm>.

³² See, e.g., McCullough, Robert Jr., Seeking the Cause of the July 3rd Spike in World Oil Prices, p.14-15 (August 5, 2008), <http://www.mresearch.com/pdfs/350.pdf>:

COT Reports to completely correct the error. No one interviewed indicated they believed the reclassification would go unnoticed.

We believe in this instance the reclassification should have been disclosed to the public on July 18, 2008, in such language that one need not be a market professional to understand its impact. This was not done.

In addition, we believe the notice should have stated that the Commission will review the facts giving rise to the reclassification promptly in order to discover both its cause and its effect, if any, on market surveillance.³³ We believe the notice should have informed the public that all future studies addressing crude oil – including the Interim Report on Crude Oil, which had been announced only eight days earlier– would include the reclassified position data going back to the beginning of the classification error. Finally, the notice should have informed the public that the position reclassification did not alter any previous studies or Congressional testimony regarding the crude oil market, but if further research indicated any error, a formal announcement would be made.

If nothing else, the failure to explain clearly the basic facts pertaining to the reclassification placed the Chief Economist in a difficult situation with regard to the Interim Report. To be sure, the July 18, 2008 reclassification did not alter the analysis contained in the Interim Report. Nevertheless, we understand from our interview with the Chief Economist that concerns were raised regarding how to address the reclassification in the Interim Report.

Certainly one concern was that any attempt to describe the reclassification would conflict with future official Commission statements regarding the reclassification. Another concern was that a detailed discussion could inadvertently disclose the identity of the entity or entities associated with the reclassified positions.

Footnote seven of the Interim Report stated: “The analysis in this report is based on data through July 18, 2008.”³⁴ We understand that the text of footnote seven was intended to convey the fact that the Interim Report was based on updated and accurate surveillance data following the crude oil position reclassification. In light of the deficiencies in the Special Announcement issued on July 18, we believe it did not and could not convey that fact. In order to understand the full import of footnote seven, a reader would need to know that July 18, 2008 was associated with a reclassification in crude oil positions for use in the COT Report, and further would likely benefit from expertise in analyzing the original and revised COT Reports published that day.

³³ Position classification data maintained by DMO is just one tool used by CFTC Market Surveillance to monitor the markets. “[A]ccording to CFTC staff, analyzing market data is an art as well as a science.” GAO, Report to Congressional addressees, Trends in Energy Derivatives Markets Raise Questions about CFTC’s Oversight (GAO-08-25), p.47 (October 2007).

³⁴ Interim Report, *supra*, p19 n.7.

To restate, we conclude that the Interim Report was based on accurate and best available data. However, the concerns giving rise to this investigation were well-founded. We believe these concerns could have been avoided through a narrative and clear disclosure of the same facts pertaining to the July 18 reclassification that were probably understood by market professionals through the COT Reports.

PART FIVE
EVIDENCE, ANALYSIS AND CONCLUSIONS REGARDING THE ANALYSIS
EMPLOYED IN THE INTERIM REPORT

I. Introduction and Description of the Structure of the Interim Report

In addition to investigating whether the data used in the Interim Report was inaccurate, we were asked to “investigate and determine whether any other flawed data or analyses were used in the report.” We did contact Congressional staff to find out if there were specific types of flaws in the data or analyses that we should look for, and were informed that there were no specific instructions. We determined to interview CFTC staff in the OCE, as well as members of the ITF in order to obtain their views on the analysis and data in the report.

The Interim Report on Crude Oil consists of an introduction; an executive summary; background sections discussing various aspects of the current crude oil market such as supply and demand; exchange and interest rates; data tables showing open interest by various market participants between 2003-2008; and analyses that examines whether speculative activity in the crude oil markets has caused price movements between January 2000 and June 2008.

In order to determine whether speculative activity in the crude oil markets has caused price movements, the Interim Report employed a method of analysis known as Granger Causality. Put very simply, the Granger Causality test examines the correlation between two data sets. More specifically:

According to the definition of causality posited by Granger, a variable X “causes” another variable Y when the prediction of the current value of Y can be improved by incorporating information on past values of X.³⁵

II. Granger Causality and Weaknesses Associated with the Analysis Contained in the Interim Report.

Each individual interviewed in the course of this investigation and familiar with the analyses used in the Interim Report stated that, given the data available, Granger

³⁵ Doane, Michael J. and Spulber, Daniel F., Open Access and the Evolution of the U.S. Spot Market for Natural Gas, 37 J.Law and Econ 477, 496 (October 1994)(citing Clive W. Granger, Investigating Causal Relations by Econometric Models and Cross Spectral Methods, 37 Econometrica 424 (1969)).

Causality was an appropriate method of analysis. All interviewed stated that it is a widely accepted method of analysis, and has been used for decades for similar analyses. OCE staff stated that Granger Causality has been used consistently by CFTC to analyze the energy markets for at least two years.

All individuals interviewed stated that Granger Causality as a tool for economic analysis does have its weaknesses. Weaknesses discussed by individuals included the fact that Granger Causality may not enable a researcher to specifically identify a likely cause of an event when multiple factors are impacting an outcome. Moreover, it was noted that Granger Causality is not fool-proof; that is, even if position changes by speculators preceded price movements, there could still be other factors causing price movements. Nevertheless, all economists familiar with the Interim Report and interviewed during the course of this investigation stated that the Interim Report adequately disclosed the weaknesses associated with Granger Causality.

We agree. The Interim Report discusses weaknesses associated with Granger Causality analysis at page 28:

While these statistical tests present the most complete examination to date of the relation between position changes and price changes, they – like all statistical tests – have some limitations. First, the analysis was performed for trader groups rather than individual traders. Consequently, these tests would not be able to detect if the positions of some traders within a trading category have much greater influence over prices than the positions of other traders in that category. Second, the tests utilize end of day position data. Thus, the tests may not capture any intraday position-price relationships. Finally, the tests were performed on aggregated net position changes in the nearby contracts alone (defining nearby as the futures contract with the largest open interest). As a result, the tests do not reflect a systematic effect of position changes at different maturities on either the prices of the nearby futures contract or on the whole term structure of futures prices.³⁶

In addition, footnote 10 of the Interim Report reads as follows:

Granger Causality tests do not prove a causal relationship between variables, only a statistical probability that, over a long enough period of time, one variable leads another.³⁷

We examined other discussions of the weaknesses associated with Granger Causality testing,³⁸ and found nothing indicating the Interim Report did not understand such weaknesses.

³⁶ Interim Report, *supra*, p.28-29.

³⁷ *Id.*, p.27 n.10.

³⁸ See, e.g., Strnad, Jeff, Deflation and the Income Tax, 59 Tax L. Rev. 243, 291 n.124 (Spring 2006).

III. Other Issues Regarding Potential Flaws in Analysis Contained in the Interim Report

Individuals interviewed in the course of this investigation did express concern that the Interim Report was issued prior to receipt and analysis of all data previously requested by the CFTC. As previously stated, CFTC had issued over 40 Special Calls to 32 entities earlier in the year, with the goal of obtaining crude oil position and trade information from swaps dealers and index traders. No one expressed any concern that the absence of this additional data rendered the analysis in the Interim Report inaccurate or misleading. However, views were expressed that with the Special Call information the report would be more informative, and without this additional information the Interim Report was of less use.

While these concerns are valid, we believe the Interim Report fully disclosed the character of the information analyzed, as well as the additional information that was anticipated for a subsequent report slated for release in September. Certainly it would have been improper to fail to disclose that certain market information that may be relevant had not yet been obtained and analyzed. However, the Executive Summary of the Interim Report states:

The Task Force will continue to develop its analysis of crude oil and expand its work to cover other commodities in the coming months. New data from CFTC's Special calls on the activities of commodity swap dealers and commodity index traders is expected to become available for review during this time. In addition, an examination of prices in other commodities is expected to further enhance understanding of commodity markets.³⁹

In addition, the Concluding Remarks state:

In June 2008, the CFTC issued requests for disaggregated information – Special Calls – to swap dealers and commodity index traders. Data submitted in response to the special calls is expected to enable a detailed analysis of index trading and over-the-counter swaps across a wide variety of futures markets. This analysis, in turn, would enable the CFTC to gauge the effectiveness of current rules and regulations governing the dynamics of futures markets.⁴⁰

We believe the Interim Report adequately disclosed the possible weaknesses associated with the available data. As explained in PART SIX, we believe the CFTC had adequate reason to issue an Interim Report in July 2008 notwithstanding the outstanding Special Calls.

³⁹ Interim Report, *supra*, p.3.

⁴⁰ *Id.*, p.32 n.11.

In addition, three individuals stated that the report did not include intra-day trade data. All opined that intra-day trade data would permit a more detailed examination between price movements and trade activity by speculators. Two individuals indicated that this data is not maintained by CFTC Market Surveillance. One indicated that obtaining the volume of data that would be necessary to complete a study would be onerous.⁴¹

One individual indicated that data from similar crude oil futures traded on the Intercontinental Exchange (ICE) could give a more complete market picture, but also stated it could be difficult to compare data from the two exchanges. He opined that OCE may determine to examine ICE data in the future.

Finally, it came to our attention that the Herfindahl-Hirschman Index (HHI) has been suggested as a possible tool to assist analysis of energy futures and over the counter markets.⁴² The Interim Report does not address HHI. The Department of Justice has described HHI as follows:

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$).

The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1.51.⁴³

Because it appears HHI is first and foremost a tool to analyze antitrust issues, its potential to assist analysis of exchange traded futures and options on futures may not be

⁴¹ The lack of intraday trading information was discussed in the Interim Report. Id., p.28..

⁴² See Press Release, Sen. M. Cantwell, Senators Cantwell, Wyden Call for Federal Agencies to Use New Market Collection Tools to Protect Consumers (Aug. 7, 2008).

⁴³ Available at <http://www.usdoj.gov/atr/public/testimony/hhi.htm>.

relevant in this context.⁴⁴ In the course of our interviews, we did question economists both inside and outside CFTC regarding HHI. No one interviewed endorsed HHI as a reliable and proven tool to analyze the futures markets. The Acting Chairman stated that he is aware of the issue and has instructed the Chief Economist to look into HHI.

IV. Analysis and Conclusions

We found no indication that the analysis used in the Interim Report was flawed. The possible weaknesses of Granger Causality analysis were fully explained. The fact that CFTC had not yet obtained data from swaps dealers and commodity index traders was fully disclosed. HHI was not employed in connection with the report, but we do not believe its absence affected the report's reliability or integrity. We note that the Acting Chairman states that the possible usefulness of HHI as an analytical method will be explored.

PART SIX EVIDENCE, ANALYSIS AND CONCLUSIONS REGARDING THE TIMING OF THE RELEASE OF THE INTERIM REPORT

I. Evidence Regarding the Decision to Release the Interim Report on July 22, 2008

On July 15, 2008, Senators Reid, Durbin, Schumer, Dorgan and Murray introduced Senate Bill 3268, the "Stop Excessive Energy Speculation Act of 2008."⁴⁵ The bill proposed a number of undertakings by CFTC, including requirements to:

- set maximum speculative position limits on nonlegitimate hedge trading
- identify each large over-the-counter transaction or class of such transactions in order to detect and prevent potential price manipulation of, or excessive speculation in, any contract listed for trading on a registered entity
- routinely require detailed reporting from index traders and swap dealers in markets under its jurisdiction
- disaggregate and make public monthly: (1) the number of positions and total value of index funds and other passive, long-only positions in energy markets; and (2) data on speculative positions relative to bona fide physical hedgers in those markets

⁴⁴ We are aware of recent research discussing the applicability of HHI to analyze the CFTC COT Reports, and offer no opinion. See McCullough, Robert Jr., Seeking the Cause of the July 3rd Spike in World Oil Prices, p.13-14 (August 5, 2008), <http://www.mresearch.com/pdfs/350.pdf>.

⁴⁵ http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s3268pcs.txt.pdf.

On July 22, 2008, a motion on Senate Bill 3268 to proceed to measure was considered in the Senate, and cloture⁴⁶ was invoked in the Senate by a vote of 94-0. This vote took place at 9:48 a.m. On July 22, 2008, the Interim Report was posted on the CFTC web site at approximately 4:00 p.m. The report concluded that, based on an analysis of available detailed trade information maintained by CFTC, it did not appear that speculators were driving the crude oil prices, and were instead trading in response to crude oil prices. On July 25, 2008, a second cloture motion on Senate Bill 3268 failed by a vote of 50-43.

We investigated the allegation that the Interim Report “appears to have been created and released to influence that Senate vote, which would be highly improper in our view.”⁴⁷ Certainly the timing of the release of the Interim Report only three days before the July 25th vote provides circumstantial evidence. The implication would be that, after a cloture motion passed on July 22nd, the CFTC was motivated to rush the Interim Report to completion in order to influence the vote on the 25th.

We interviewed the Acting Chairman, staff in the Office of the Chairman, the Chief of Staff, the General Counsel, the Director of External Affairs, staff in the Office of External Affairs, the Chief Economist, staff in the OCE and members of the ITF to ascertain whether this was the case. All agency officials denied it. Members of the ITF either denied it or stated they had no knowledge regarding the release date.

The Chairman and staff in the Office of External Affairs provided us with evidence that, earlier in the Summer, the Interim Report was targeted for release in mid-July due to mounting interest expressed by both Houses of Congress. On May 27, 2008, the Acting Chairman received a letter from the Chairman of the Senate Committee on Energy and National Resources (the Committee Chairman). In addition to a set of questions requiring detailed response, the Committee Chairman generally suggested that his Committee would benefit “from a greater understanding of certain aspects of the CFTC’s oversight of – and statistical analysis in relation to – energy commodity markets.”⁴⁸

On June 9, 2008, the Acting Chairman received a letter from Senators Feinstein, Stevens, Cantwell, Snowe and Wyden (June 9 letter).⁴⁹ The June 9 letter requested a study to be completed by mid-July. The request anticipated an exploration of issues not addressed in the Interim Report, such as the use of emergency powers and further

⁴⁶ Cloture is described on the US Senate website: “The cloture rule—Rule 22—is the only formal procedure that Senate rules provide for breaking a filibuster. A filibuster is an attempt to block or delay Senate action on a bill or other matter. Under cloture, the Senate may limit consideration of a pending matter to 30 additional hours of debate.” http://www.senate.gov/reference/reference_index_subjects/Cloture_vrd.htm.

⁴⁷ See Appendix I.

⁴⁸ See Appendix III.

⁴⁹ See Appendix IV.

regulation concerning futures trading by index funds. On July 8, 2008, the Acting Chairman responded to the June 9 letter.⁵⁰ The response stated, among other things, that the ITF “is meeting regularly and is working to make public a report as soon as possible.”

On July 10, 2008, the Acting Chairman announced that the ITF would issue an Interim Report on Crude Oil. This announcement was made during a hearing before the House Appropriations Subcommittee on Agriculture Rural Development, Food and Drug Administration, and Related Agencies.⁵¹ In short, there are several indications that the Interim Report was created and scheduled for release in mid-July, independent of the Senate vote, in order to respond to contemporaneous concerns voiced by Congress.

The Acting Chairman, as well as the Chief of Staff and staff of the Office of External Affairs stated they were aware of Senate Bill 3268, and that its existence was also a factor in the decision to release the report in mid-July. However, while they were aware of the legislation, they denied any intent to influence the vote. The General Counsel stated that he was aware that “Congress was acting or getting ready to act;” however, the time frame for the release of the Interim Report pre-dated the events in Congress. The Chief Economist said he was generally aware that legislation had been proposed to regulate speculative trading, but stated he had not studied and was not following it in detail, and was not aware of any Senate vote. Members of the ITF we interviewed were not aware of the Senate vote.

While the earlier expressions of Congressional interest, as well as the views of the Acting Chairman, the Chief of Staff, the General Counsel, the Chief Economist, staff in External Affairs, and the ITF members regarding the timing of the release of the Interim Report are certainly relevant in a broad sense, and certainly indicate the Interim Report was not released in order to influence the Senate vote, we believe such considerations do not address the core issue here.

At bottom, any debate regarding whether the release of a report is proper hinges on the quality of the report. We would presume an intentionally biased report would be intended to improperly influence all who read it. On the other hand, the release of an unbiased report – even one of an interim nature – should be useful regardless of timing. We believe the crucial issue was whether the Acting Chairman (or anyone else) improperly influenced the conclusions published in the Interim Report. If so, this would lend credence to the allegation that publication was timed to influence a Senate vote.

When asked, the Acting Chairman stated that he did not influence the Interim Report in any way, and he received no pressure in that regard from outside the Agency. The Chief of Staff also stated that there were no efforts to influence the Interim Report. When asked if the Acting Chairman or anyone else had tried to influence the findings

⁵⁰ See Appendix V.

⁵¹ The Acting Chairman’s Testimony is available here:

<http://www.cftc.gov/stellent/groups/public/@newsroom/documents/speechandtestimony/opalukken-46.pdf>

published in the Interim Report in any way, the responses of the Chief Economist and OCE staff were more extreme.

The Chief Economist stated that he has gotten no pressure from the Acting Chairman at all. He volunteered that, having enjoyed past success uncovering anomalies in the equities markets,⁵² he would be glad to uncover groundbreaking information or theory to explain recent price movements in crude oil. He also stated that the volume of published opinion and Congressional interest bothers him immensely, but so far all research points to the conclusions published in the Interim Report.

Three staff members of OCE who worked on the Interim Report all stated that they received no pressure from the Chief Economist, the Acting Chairman or anyone else regarding the conclusions to be reached. One OCE staff member stated that, if such a situation arose, he would not jeopardize his future status and reputation in academia. He stated that he would quit CFTC rather than participate in the publication of a biased study. Another OCE staff member also stated that he received no pressure regarding the conclusions published in the Interim Report, that his reputation as an economist was too important to risk, and that he believes the Interim Report protects his reputation. A third OCE staffer, when asked, volunteered that he would not only leave if improperly pressured in connection with his research, he actually knew where he would be going to work. He stated that he had not been influenced by the Acting Chairman, the Chief Economist or anyone else in the performance of his duties.⁵³

The Chief Economist stated that the original target release date for the Interim Report was July 18, 2008.⁵⁴ That deadline was not met due to the additional work necessary to update the report to reflect the reclassification of crude oil positions announced on July 18. This involved not only amending the relevant portions of the draft, but also re-circulating the draft to members of the ITF for review.

An ITF member representing the Treasury Department stated that he reviewed a second draft of the Interim Report with other ITF members during a conference call on Thursday July 10, 2008. He was subsequently made aware of the reclassification during the next week, and was told the release date would have to be pushed back. On Saturday, July 19, he received his last draft of the Interim Report to review and edit. He completed his comments to CFTC by return Email on Monday, July 21. The CFTC General Counsel stated that he reviewed the final draft late in the day on July 21, and he made a few non-substantive edits. The Interim Report was issued the next day.

⁵² See, e.g., Christie William G., Harris Jeffrey H, and Schultz Paul H., *Why did NASDAQ Market Makers Avoid Odd Eighth Quotes?*, Journal of Finance, Vol 49(5), pg 1841-1860 (December 1994).

⁵³ An employee in the Market Surveillance section also volunteered that he had left other employment when improperly pressured in his research, and would do so here if the case arose. He stated he had not been pressured regarding his analysis of the crude oil markets.

⁵⁴ Four members of the OCE staff came in over the July 5 weekend in order to help meet that deadline. OCE staff also worked over the July 19 weekend.

II. Analysis and Conclusions

We conclude that the Agency did not time the release of the Interim Report to influence any Senate vote. While the release date does give rise to circumstantial evidence, the views and statements of all involved squarely oppose the circumstantial evidence. We are influenced by the fact that the evidence shows that the planned release date of the July 18th was pushed back to the 22nd due to the position reclassification, and believe this was the overriding factor and event dictating the release date for the report. We are also persuaded by the fact that we failed to find any other improper influence associated with the creation of the report.

PART SEVEN SUMMARY OF FINDINGS AND CONCLUSIONS

In this report, we investigated allegations of wrongdoing in connection with the July 22, 2008 publication of the Interagency Task Force Interim Report on Crude Oil. The allegations were:

- The authors and contributors of the Interim Report on Crude Oil knowingly used information that was inaccurate and incomplete
- The Interim Report analyzed the crude oil markets using flawed analytical methods
- The CFTC timed the release of the Interim Report improperly in order to influence a Senate vote

In the course of this investigation, we interviewed 44 individuals, including officers and employees of CFTC, the Treasury Department, the Energy Information Agency, the Federal Reserve Board, the Department of Agriculture, the Securities and Exchange Commission and the Council of Economic Advisers. We reviewed drafts of the Interim Report both before and after the reclassification of crude oil positions, as well as other presentations and papers by CFTC addressing energy markets. We reviewed relevant Email, Congressional testimony and proposed legislation. We researched Granger Causality and the Herfindahl-Hirschman Index.

We conclude the allegations are not substantiated. The Interim Report was based on the most accurate data available at the time. To be sure, the Interim Report did not address commodity index trading and swaps dealers; however, the Interim Report clearly explained that information on swaps and index trading was being collected and would be addressed in a separate report slated for release in September.

The analysis employed by the OCE was not flawed. Granger causality has been in existence since 1969. It is widely known and widely used, and it has been used in other energy market studies.⁵⁵ CFTC used Granger Causality to analyze energy markets in the past. Possible weaknesses associated with Granger Causality were fully disclosed.

We believe it important that CFTC employed a method of analysis consistent with recent past CFTC analyses of the crude oil market. Analytical consistency matters. Employing a series of discrete analytical models could indicate an attempt to locate an analytical model solely for the purpose of achieving a pre-ordained result. It appears that use of the Herfindahl-Hirschman Index might not have been advisable in this instance for that reason alone, though we note with approval that the OCE will be examining HHI further for possible application in the future.

Finally, it does not appear the Interim Report was issued in order to improperly influence a Senate vote. While the report was released only two days before the vote, and while the Acting Chairman freely admitted that he was aware of the legislation, all involved claim there was no intent to release the Interim Report in order to influence any vote. The timeline leading up to the release predates announcement of the vote and appears dominated by the position reclassification. We therefore conclude based on all the evidence that timing of the release of the Interim Report depended on the Chief Economist's determination that the report was ready for release.

As we stated earlier, we believe that the Special Announcement issued on July 18, 2008, should have disclosed to the public – in narrative form – the same information disclosed to market professionals through the COT Reports, with greater explanatory material. We also believe the Special Announcement should have explained that all future studies would use the revised position data, that the circumstances of the reclassification would be closely reviewed, and that any necessary amendments to prior testimony, publications, studies or presentations would be formally announced.

We are convinced that the magnitude of the situation was clear to everyone involved at CFTC; and all expected the reclassification to generate media attention. Therefore we do not believe there was any attempt to conceal the reclassification. However, the decision to present the raw data in a manner consistent with past reclassifications, so as to avoid any accusation of politicizing or “spinning” the announcement, did not suffice.

What resulted was a publication that only industry professionals could easily interpret, and was subject to misinterpretation. While it is always easy to sit in judgment after the fact,⁵⁶ we believe the better course would have been to say more at the outset.

⁵⁵ See fn.31.

⁵⁶ “Hindsight is always twenty-twenty.” Billy Wilder (1906-2002).

APPENDIX I

United States Senate

WASHINGTON, DC 20510

August 14, 2008

A. Roy Lavik, Inspector General
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Mr. Lavik:

We are writing to request that you investigate the role of the Commodities Futures Trading Commission (CFTC) in its capacity as chair of the Interagency Task Force on Commodity Markets and its release of the Interim Report on Crude Oil on July 22, 2008. In particular, we request that you investigate how this report was prepared and why it was released after the CFTC staff had determined that critical information upon which it was based was inaccurate.

We also request that you investigate the suspicious timing of the Interim Report. The unannounced and unexpected Interim Report was released just a few days before a key Senate vote on a pending bill related to speculation in the oil markets. The report, which specifically addressed speculation, appears to have been created and released to influence that Senate vote, which would be highly improper in our view.

On June 10, 2008, the CFTC announced the formation of an Interagency Task Force on Commodity Markets. The Task Force is chaired by CFTC staff and on July 22, 2008 the Task Force issued an Interim Report on the crude oil market. Notwithstanding a finding that "the positions of non-commercial traders in general, and hedge funds in particular, often move in the same direction as prices," the report concluded that the increase in oil prices between January 2003 and June 2008 was largely due to fundamental supply and demand factors. This conclusion appears to be based, to significant degree, on analyses by CFTC staff of trading positions included in the CFTC Commitments of Traders Report (COT), including the correlations of commercial and non-commercial traders to price movements and trading volumes.

However on July 18, 2008, just days before the Interim Report was issued, the CFTC staff issued a special announcement revealing that speculative investors played a larger role in oil trading than the CFTC staff realized. In fact, speculative, non-commercial trading accounted for nearly half of the oil trading on the New York Mercantile Exchange (NYMEX). In short, CFTC staff determined that based upon additional data obtained as a result of a special data call to select market participants, it had been incorrectly classifying a significant number of non-commercial trades carried out by a single large trader as commercial. This "reclassification," which represented approximately 10% of the NYMEX crude oil futures and options positions, essentially raises the percent of NYMEX oil trades officially attributable to speculative investors to 48% from 38%. Some outside experts believe that the non-commercial trades account for an even higher percentage and the CFTC is itself continuing to collect information from this special data call regarding other traders which could further alter this balance.

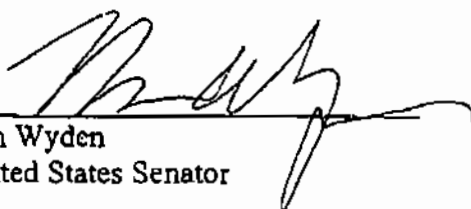
We are greatly disturbed that although CFTC staff obviously knew that underlying data used to prepare the Interim Report was seriously flawed, the Interim Report was nonetheless publicly released. Indeed, the CFTC press release announcing the Report (Release 5520-08) states that the report "for the first time, attempts to compile the government's best available data and analysis into one report." In fact, CFTC knew that this data was NOT the government's best available data, but was decidedly flawed data.

Consequently, we request that you investigate the process by which the Interim Report was prepared and released, including but not limited to the decision on timing of the public release, the decision to characterize the information contained in the report not only as accurate, but as the best available data, and to identify the individuals involved in making these decisions. We also ask you to investigate and determine whether other flawed data or analyses were used in preparing the Interim Report.

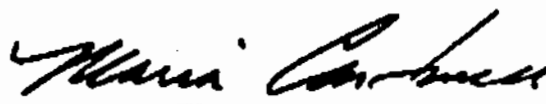
Because the Interim Report was just that, an interim report of an important, ongoing agency activity, establishing the integrity of CFTC's management of, and procedures for, conducting and reporting its analyses of the commodity markets is of the greatest national concern. We therefore expect you to give this request the highest priority. If you believe that your office lacks the necessary investigative resources to conduct this investigation, we stand prepared to work with the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) – the two interagency coordinating committees for the Federal Government's Inspectors General – to ensure that you have the resources that you need.

Because the CFTC Task Force activities are ongoing and the Task Force is expected to issue a final report on oil markets in a matter of weeks, it is imperative that your review of this matter be completed as soon as possible. We therefore request that you complete your investigation and report to the Commission and Congress on your findings no later than September 12, 2008.

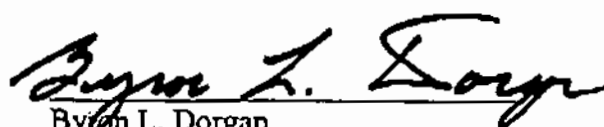
Sincerely,



Ron Wyden
United States Senator



Maria Cantwell
United States Senator



Byron L. Dorgan
United States Senator



Bill Nelson
United States Senator

APPENDIX II

GULF # 6 FUEL 3.0% SULFUR SWAP - NEW YORK MERCANTILE EXCHANGE Code-02165A
FUTURES ONLY POSITIONS AS OF 07/15/08

-----							NONREPORTABLE POSITIONS		
NON-COMMERCIAL			COMMERCIAL		TOTAL				
-----							-----		
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	
-----							-----		
{CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		6,794	
COMMITMENTS									
0	0	0	6,619	6,489	6,619	6,489	175	305	
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						113)			
0	0	0	235	235	235	235	-122	-122	
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS									
0.0	0.0	0.0	97.4	95.5	97.4	95.5	2.6	4.5	
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						38)			
0	0	0	27	27	27	27			

NY RES FUEL 1.0% SULFUR SWAP - NEW YORK MERCANTILE EXCHANGE Code-02165B
FUTURES ONLY POSITIONS AS OF 07/15/08

-----							NONREPORTABLE POSITIONS		
NON-COMMERCIAL			COMMERCIAL		TOTAL				
-----							-----		
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	
-----							-----		
(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		7,179	
COMMITMENTS									
0	805	0	6,914	6,209	6,914	7,014	265	165	
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						217)			
0	0	0	222	257	222	257	-5	-40	
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS									
0.0	11.2	0.0	96.3	86.5	96.3	97.7	3.7	2.3	
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						35)			
0	2	0	24	23	24	25			

EUR 3.5% FUEL OIL RTD CAL SWAP - NEW YORK MERCANTILE EXCHANGE Code-02165E
FUTURES ONLY POSITIONS AS OF 07/15/08

							NONREPORTABLE POSITIONS		
NON-COMMERCIAL			COMMERCIAL		TOTAL				
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	
(CONTRACTS OF 1,000 METRIC TONS)							OPEN INTEREST:		3,620
COMMITMENTS									
0	179	68	3,045	2,891	3,113	3,138	507	482	
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:							121)		
0	16	-9	189	242	180	249	-59	-128	
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS									
0.0	4.9	1.9	84.1	79.9	86.0	86.7	14.0	13.3	

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 35)
 0 3 3 27 31 30 34

SING FUEL OIL 180 CAL SWAP - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02165G

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 METRIC TONS)						OPEN INTEREST:		3,297
0	60	25	2,682	2,642	2,707	2,727	590	570
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						277)		
0	5	-15	229	230	214	220	63	57

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

0.0 1.8 0.8 81.3 80.1 82.1 82.7 17.9 17.3

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 37)
 0 2 1 31 30 32 32

NO. 2 HEATING OIL, N.Y. HARBOR - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-022651

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 42,000 U.S. GALLONS)						OPEN INTEREST:		227,987
29,807	15,247	34,629	131,764	154,262	196,200	204,138	31,787	23,849
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						12,649)		
1,079	1,930	4,172	6,408	4,589	11,659	10,691	990	1,958

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

13.1 6.7 15.2 57.8 67.7 86.1 89.5 13.9 10.5

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 133)
 38 20 39 65 65 122 109

SING GASOIL SWAP - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02265J

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1000 BARRELS)						OPEN INTEREST:		7,876
323	200	400	7,103	7,206	7,826	7,806	50	70
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						276)		
25	0	0	325	330	350	330	-74	-54

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

4.1	2.5	5.1	90.2	91.5	99.4	99.1	0.6	0.9
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 43)

2	1	3	29	31	33	34
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SING GASOIL/RDAM GASOIL SWAP - NEW YORK MERCANTILE EXCHANGE

Code-02265T

FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST: 6,490		
1,116	516	0	5,149	5,974	6,265	6,490	225	0

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: -25)

0	0	0	75	-25	75	-25	-100	0
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

17.2	8.0	0.0	79.3	92.0	96.5	100.0	3.5	0.0
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 27)

2	2	0	13	16	15	18
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NATURAL GAS - NEW YORK MERCANTILE EXCHANGE

Code-023651

FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(10,000 MMBTU'S)						OPEN INTEREST: 964,168		
217,143	311,604	303,355	364,433	315,751	884,931	930,710	79,237	33,458

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: -7,510)

1,815	7,647	-15,734	2,167	1,673	-11,752	-6,414	4,242	-1,096
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

22.5	32.3	31.5	37.8	32.7	91.8	96.5	8.2	3.5
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 234)

94	47	86	78	68	218	166
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MICHCON BASIS SWAP - NEW YORK MERCANTILE EXCHANGE

Code-02365A

FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)						OPEN INTEREST: 98,340		
1,508	7,084	1,690	86,499	80,909	89,697	89,683	8,643	8,657

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: -250)

616	-475	-10	-856	119	-250	-366	0	116
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

1.5	7.2	1.7	88.0	82.3	91.2	91.2	8.8	8.8
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 30)

2	1	2	24	24	26	27		
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PERMIAN BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02365B

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S) OPEN INTEREST: 69,910

COMMITMENTS

3,067	10,021	3,238	57,031	48,058	63,336	61,317	6,574	8,593
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 3,205)

0	-177	387	2,818	2,567	3,205	2,777	0	428
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

4.4	14.3	4.6	81.6	68.7	90.6	87.7	9.4	12.3
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 38)

2	2	3	29	24	32	28		
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M-3 BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02365C

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S) OPEN INTEREST: 107,270

COMMITMENTS

0	684	3,687	93,606	94,262	97,293	98,633	9,977	8,637
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 3,352)

0	117	253	2,439	3,068	2,692	3,438	660	-86
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

0.0	0.6	3.4	87.3	87.9	90.7	91.9	9.3	8.1
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 35)

0	1	1	31	27	32	28		
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TCO BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02365D

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S) OPEN INTEREST: 94,860

COMMITMENTS

5,704	2,708	214	74,961	80,126	80,879	83,048	13,981	11,812
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 388)								
0	0	0	1,323	459	1,323	459	-935	-71

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
6.0	2.9	0.2	79.0	84.5	85.3	87.5	14.7	12.5

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 33)								
2	1	1	21	26	24	27		

MALIN BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02365E

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)						OPEN INTEREST:		49,849
COMMITMENTS								
3,020	1,790	5,134	38,106	39,154	46,260	46,078	3,589	3,771
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: -48)								
0	-364	0	-48	316	-48	-48	0	0
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
6.1	3.6	10.3	76.4	78.5	92.8	92.4	7.2	7.6
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 24)								
1	1	1	18	18	20	19		

PG&E CITYGATE BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02365F

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)						OPEN INTEREST:		72,162
COMMITMENTS								
4,702	3,999	4,086	53,856	54,225	62,644	62,310	9,518	9,852
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 1,180)								
-62	-1,734	1,220	745	749	1,903	235	-723	945
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
6.5	5.5	5.7	74.6	75.1	86.8	86.3	13.2	13.7
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 31)								
2	1	1	22	25	25	26		

NGPL TEXOK BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02365G

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)						OPEN INTEREST:		101,457
COMMITMENTS								
3,450	3,333	2,963	89,495	89,677	95,908	95,973	5,549	5,484
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						1,687)		
302	-394	172	1,243	2,063	1,717	1,841	-30	-154
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
3.4	3.3	2.9	88.2	88.4	94.5	94.6	5.5	5.4
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						48)		
1	3	3	29	38	32	42		

NGPL MID-CON BASIS SWAP - NEW YORK MERCANTILE EXCHANGE Code-02365K
FUTURES ONLY POSITIONS AS OF 07/15/08

							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)						OPEN INTEREST:		116,111
COMMITMENTS								
6,004	1,608	6,349	94,173	94,319	106,526	102,276	9,585	13,835
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						720)		
4,577	-181	-613	-3,150	970	814	176	-94	544
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
5.2	1.4	5.5	81.1	81.2	91.7	88.1	8.3	11.9
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						34)		
2	1	3	23	26	26	30		

DEMARC BASIS SWAP - NEW YORK MERCANTILE EXCHANGE Code-02365L
FUTURES ONLY POSITIONS AS OF 07/15/08

							NONREPORTABLE POSITIONS		
NON-COMMERCIAL			COMMERCIAL		TOTAL				
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	
(2,500 MMBTU'S)							OPEN INTEREST:		56,919
COMMITMENTS									
826	2,388	6,381	45,265	37,495	52,472	46,264	4,447	10,655	
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:							17)		
-382	-96	288	173	-156	79	36	-62	-19	
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS									
1.5	4.2	11.2	79.5	65.9	92.2	81.3	7.8	18.7	
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:							28)		
2	2	4	18	17	22	21			

VENTURA BASIS SWAP - NEW YORK MERCANTILE EXCHANGE Code-02365M
FUTURES ONLY POSITIONS AS OF 07/15/08

-----							NONREPORTABLE	
NON-COMMERCIAL			COMMERCIAL		TOTAL		POSITIONS	
-----			-----		-----		-----	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
-----							-----	
(2,500 MMBTU'S)					OPEN INTEREST:		106,445	
COMMITMENTS								
6,321	7,863	19,607	79,790	75,306	105,718	102,776	727	3,669
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:					-1,060)			
985	186	-592	-1,423	-744	-1,030	-1,150	-30	90
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
5.9	7.4	18.4	75.0	70.7	99.3	96.6	0.7	3.4
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:					30)			
4	1	3	17	20	22	23		

DOMINION BASIS SWAP - NEW YORK MERCANTILE EXCHANGE Code-02365N
FUTURES ONLY POSITIONS AS OF 07/15/08

-----							NONREPORTABLE	
NON-COMMERCIAL			COMMERCIAL		TOTAL		POSITIONS	
-----			-----		-----		-----	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
-----							-----	
(2,500 MMBTU'S)					OPEN INTEREST:		60,364	
COMMITMENTS								
0	39	3,099	50,768	47,853	53,867	50,991	6,497	9,373
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:					-170)			
0	-307	-253	118	-220	-135	-780	-35	610
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
0.0	0.1	5.1	84.1	79.3	89.2	84.5	10.8	15.5
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:					31)			
0	1	1	28	26	29	27		

WAHA BASIS SWAP - NEW YORK MERCANTILE EXCHANGE Code-02365O
FUTURES ONLY POSITIONS AS OF 07/15/08

-----							NONREPORTABLE	
NON-COMMERCIAL			COMMERCIAL		TOTAL		POSITIONS	
-----			-----		-----		-----	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
-----							-----	
(2,500 MMBTU'S)					OPEN INTEREST:		96,466	
COMMITMENTS								
1,620	3,045	6,960	82,431	82,392	91,011	92,397	5,455	4,069
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						-463)		
-2,911	2,767	572	2,773	-1,934	434	1,405	-897	-1,868
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
1.7	3.2	7.2	85.5	85.4	94.3	95.8	5.7	4.2
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						50)		
2	3	4	33	35	38	39		

TRANSCO ZONE 3 SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02365S

							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)							OPEN INTEREST:	
COMMITMENTS							54,721	
0	6,171	0	47,711	43,903	47,711	50,074	7,010	4,647
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:							0)	
0	-1,712	0	0	0	0	-1,712	0	1,712
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
0.0	11.3	0.0	87.2	80.2	87.2	91.5	12.8	8.5
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:							22)	
0	2	0	17	14	17	16		

ALBERTA BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-035650

							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)							OPEN INTEREST:	
COMMITMENTS							118,842	
5,723	26,559	16,544	82,075	64,792	104,342	107,895	14,500	10,947
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:							454)	
426	-285	529	112	385	1,067	629	-613	-175
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
4.8	22.3	13.9	69.1	54.5	87.8	90.8	12.2	9.2
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:							39)	
2	5	6	32	26	38	33		

CHICAGO BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-035651

							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)							OPEN INTEREST:	
COMMITMENTS							108,575	
12,638	500	7,430	80,961	87,090	101,029	95,020	7,546	13,555
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:							-69)	
497	500	-931	36	1,663	-398	1,232	329	-1,301
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
11.6	0.5	6.8	74.6	80.2	93.0	87.5	7.0	12.5

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 29)
 4 1 4 21 19 26 23

HENRY HUB BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-035652

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)						OPEN INTEREST:		49,771
COMMITMENTS	0	2,108	0	48,791	46,559	48,791	48,667	980 1,104
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 713)								
	0	2,108	0	713	-935	713	1,173	0 -460
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
	0.0	4.2	0.0	98.0	93.5	98.0	97.8	2.0 2.2

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 26)
 0 2 0 17 15 17 17

HOUSTON SHIP CH BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-035653

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)						OPEN INTEREST:		228,576
COMMITMENTS	9,675	2,788	7,013	194,180	205,922	210,868	215,723	17,708 12,853
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 248)								
	397	-1,604	270	-357	1,558	310	224	-62 24
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
	4.2	1.2	3.1	85.0	90.1	92.3	94.4	7.7 5.6

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 57)
 4 4 5 44 42 51 48

NW PIPE ROCKIES BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-035654

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)						OPEN INTEREST:		235,196
COMMITMENTS	8,528	14,550	16,662	199,469	196,655	224,659	227,867	10,537 7,329
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 1,776)								
	215	-126	-179	3,359	4,227	3,395	3,922	-1,619 -2,146

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

3.6	6.2	7.1	84.8	83.6	95.5	96.9	4.5	3.1
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 48)

3	2	3	41	36	46	39
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PANHANDLE BASIS SWAP - NEW YORK MERCANTILE EXCHANGE

Code-035655

FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL						COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	LONG	SHORT	
(2,500 MMBTU'S)						OPEN INTEREST:		236,296			
6,325	3,631	15,138	206,038	209,753	227,501	228,522	8,795	7,774			

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 1,958)

-2,220	2,183	10	4,275	-571	2,065	1,622	-107	336
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

2.7	1.5	6.4	87.2	88.8	96.3	96.7	3.7	3.3
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 65)

3	3	5	56	53	62	58
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SAN JUAN BASIS SWAP - NEW YORK MERCANTILE EXCHANGE

Code-035656

FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL						COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	LONG	SHORT	
(2,500 MMBTU'S)						OPEN INTEREST:		47,797			
0	209	3,191	37,498	35,661	40,689	39,061	7,108	8,736			

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 825)

-263	209	342	960	184	1,039	735	-214	90
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

0.0	0.4	6.7	78.5	74.6	85.1	81.7	14.9	18.3
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 22)

0	1	1	19	14	20	15
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SOCAL BASIS SWAP - NEW YORK MERCANTILE EXCHANGE

Code-035657

FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL						COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	LONG	SHORT	
(2,500 MMBTU'S)						OPEN INTEREST:		203,811			
19,451	7,462	15,932	162,704	171,717	198,087	195,111	5,724	8,700			

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 3,378)

751	1,090	715	1,791	1,791	3,257	3,596	121	-218
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

9.5	3.7	7.8	79.8	84.3	97.2	95.7	2.8	4.3
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 51)

5	1	6	42	43	48	49
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TRANSCO ZONE 6 BASIS SWAP - NEW YORK MERCANTILE EXCHANGE Code-035658
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S) OPEN INTEREST: 58,925

COMMITMENTS

0	4,111	630	48,454	41,469	49,084	46,210	9,841	12,715
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 1,102)

0	-373	60	207	1,215	267	902	835	200
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

0.0	7.0	1.1	82.2	70.4	83.3	78.4	16.7	21.6
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 28)

0	2	1	23	20	24	22
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HENRY HUB GAS SWAP - NEW YORK MERCANTILE EXCHANGE Code-03565B
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S) OPEN INTEREST: 3,617,587

COMMITMENTS

1490572	351,451	803,314	1296963	2453773	3590849	3608538	26,738	9,049
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 83,118)

37,453	25,452	21,604	32,217	40,959	91,274	88,015	-8,156	-4,897
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

41.2	9.7	22.2	35.9	67.8	99.3	99.7	0.7	0.3
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 161)

33	15	44	106	102	155	147
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HENRY HUB PENULTIMATE GAS SWAP - NEW YORK MERCANTILE EXCHANGE Code-03565C
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S) OPEN INTEREST: 1,117,523

COMMITMENTS

119,526	356,983	247,482	746,599	510,550	1113607	1115015	3,916	2,508
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 12,728)

-8,221	39,598	-29,641	50,074	3,078	12,212	13,035	516	-307
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

10.7	31.9	22.1	66.8	45.7	99.6	99.8	0.4	0.2
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 90)

26	16	29	44	43	83	76
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 PJM ELECTRICITY MONTHLY - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-064657

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(40 MEGAWATT HOURS PER PEAK DAY)

OPEN INTEREST: 26,860

COMMITMENTS

1,180	240	392	24,539	25,568	26,111	26,200	749	660
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: -340)

0	0	0	-380	-400	-380	-400	40	60
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

4.4	0.9	1.5	91.4	95.2	97.2	97.5	2.8	2.5
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 38)

4	1	2	29	31	33	34
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 NYISO ZONE A LBMP SWAP - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-06465A

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(CONTRACTS OF 400 MEGAWATT HOURS)

OPEN INTEREST: 11,207

COMMITMENTS

1,280	0	0	9,607	10,951	10,887	10,951	320	256
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 0)

0	0	0	0	0	0	0	0	0
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

11.4	0.0	0.0	85.7	97.7	97.1	97.7	2.9	2.3
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 20)

1	0	0	10	14	11	14
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 ISO NEW ENGLAND LMP SWAP - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-06465H

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
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LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(40 MEGAWATT HOURS PER PEAK DAY)						OPEN INTEREST:		14,789
COMMITMENTS								
3,190	0	337	10,458	13,938	13,985	14,275	804	514
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						66)		
-20	0	0	50	44	30	44	36	22
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
21.6	0.0	2.3	70.7	94.2	94.6	96.5	5.4	3.5
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						24)		
2	0	2	18	18	20	20		

PJM CAL MONTH OFF PK LMP SWAP - NEW YORK MERCANTILE EXCHANGE Code-06465M
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2.5 MEGAWATTS PER OFF PEAK HRS)						OPEN INTEREST:		24,072
COMMITMENTS								
280	480	480	20,884	21,366	21,644	22,326	2,428	1,746
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						-360)		
0	0	0	-360	-360	-360	-360	0	0
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
1.2	2.0	2.0	86.8	88.8	89.9	92.7	10.1	7.3
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						24)		
1	1	1	19	18	21	19		

NORTH ILL OFF PK LMP SWAP - NEW YORK MERCANTILE EXCHANGE Code-06465N
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2.5 MEGAWATTS PER OFF PEAK HRS)						OPEN INTEREST:		30,090
COMMITMENTS								
0	240	480	29,574	28,040	30,054	28,760	36	1,330
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						-72)		
0	0	0	-72	-288	-72	-288	0	216
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
0.0	0.8	1.6	98.3	93.2	99.9	95.6	0.1	4.4
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						27)		
0	1	1	23	20	24	21		

CINERGY OFF PEAK LMP SWAP - NEW YORK MERCANTILE EXCHANGE Code-064A02
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2.5 MWH X OFF PEAK HOURS PER MONTH)						OPEN INTEREST:		9,486
COMMITMENTS								
120	0	0	7,970	8,338	8,090	8,338	1,396	1,148
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						-120)		
0	0	0	-120	-120	-120	-120	0	0
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
1.3	0.0	0.0	84.0	87.9	85.3	87.9	14.7	12.1
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						21)		
1	0	0	14	14	15	14		

CRUDE OIL, LIGHT SWEET - NEW YORK MERCANTILE EXCHANGE Code-067651
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		1,344,411
COMMITMENTS								
206,153	187,631	222,910	820,851	833,603	1249914	1244144	94,497	100,267
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						28,133)		
-3,608	-15,064	3,318	1,014	13,463	724	1,717	27,409	26,416
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
15.3	14.0	16.6	61.1	62.0	93.0	92.5	7.0	7.5
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						335)		
87	130	136	86	103	268	286		

WTI CRUDE OIL CALENDAR SWAP - NEW YORK MERCANTILE EXCHANGE Code-06765A
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		127,502
COMMITMENTS								
9,937	13,636	3,115	79,071	52,492	92,123	69,243	35,379	58,259
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						.)		
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
7.8	10.7	2.4	62.0	41.2	72.3	54.3	27.7	45.7
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						21)		
2	4	5	14	15	19	21		

DUBAI CRUDE OIL CALENDAR SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-06765G

-----							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
-----			-----		-----		-----	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
-----			-----		-----		-----	
{CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		19,136
COMMITMENTS								
900	600	25	18,011	18,311	18,936	18,936	200	200
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						85)		
0	0	0	-15	-115	-15	-115	100	200
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
4.7	3.1	0.1	94.1	95.7	99.0	99.0	1.0	1.0
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						41)		
1	2	1	30	28	32	31		

WTI CRUDE OIL FINANCIAL - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-06765I

-----							NONREPORTABLE POSITIONS		
NON-COMMERCIAL			COMMERCIAL		TOTAL				
-----							-----		
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	
-----							-----		
(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		187,405	
COMMITMENTS									
16,346	22,189	33,071	127,071	122,869	176,488	178,129	10,917	9,276	
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						-2,006)			
-420	-310	-1,633	225	150	-1,828	-1,793	-178	-213	
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS									
8.7	11.8	17.6	67.8	65.6	94.2	95.1	5.8	4.9	
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						50)			
13	11	22	25	25	48	48			

BRENT FINANCIAL - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-06765J

-----							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
-----							-----	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
-----							-----	
(CONTRACTS OF 1,000 BARRELS)					OPEN INTEREST:		30,753	
COMMITMENTS								
1,710	7,386	3,000	23,593	18,157	28,303	28,543	2,450	2,210
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:					4,689)			
0	5,400	0	5,107	-636	5,107	4,764	-418	-75
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
5.6	24.0	9.8	76.7	59.0	92.0	92.8	8.0	7.2

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 22)
 1 3 2 15 16 18 20

BRENT-DUBAI SWAP - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-067650

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		5,882
0	600	0	5,882	5,090	5,882	5,690	0	192
COMMITMENTS								
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						90)		
0	0	0	90	-102	90	-102	0	192
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
0.0	10.2	0.0	100.0	86.5	100.0	96.7	0.0	3.3

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 24)
 0 2 0 17 14 17 16

PALLADIUM - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-075651

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 100 TROY OUNCES)						OPEN INTEREST:		15,809
10,826	2,897	140	2,548	12,265	13,514	15,302	2,295	507
COMMITMENTS								
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						-766)		
32	-500	14	-802	-421	-756	-907	-10	141
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
68.5	18.3	0.9	16.1	77.6	85.5	96.8	14.5	3.2

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 105)
 53 12 5 16 27 71 42

PLATINUM - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-076651

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 50 TROY OUNCES)						OPEN INTEREST:		13,943
8,799	2,464	26	2,016	10,519	10,841	13,009	3,102	934
COMMITMENTS								
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						-704)		
-253	-79	-4	-356	-419	-613	-502	-91	-202

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

63.1	17.7	0.2	14.5	75.4	77.8	93.3	22.2	6.7
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 70)

35	7	2	10	19	45	28
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GASOLINE BLENDSTOCK (RBOB) - NEW YORK MERCANTILE EXCHANGE

Code-111659

FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 42,000 U.S. GALLONS)						OPEN INTEREST:		244,161
61,682	14,760	20,543	139,522	197,608	221,747	232,911	22,414	11,250

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: -2,209)

-2,804	-417	-464	1,349	-1,421	-1,919	-2,302	-290	93
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

25.3	6.0	8.4	57.1	80.9	90.8	95.4	9.2	4.6
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 181)

62	23	38	77	87	155	135
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SING JET KERO SWAP - NEW YORK MERCANTILE EXCHANGE

Code-26265D

FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		4,352
200	0	0	4,010	4,342	4,210	4,342	142	10

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 600)

0	0	0	700	700	700	700	-100	-100
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

4.6	0.0	0.0	92.1	99.8	96.7	99.8	3.3	0.2
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 26)

2	0	0	18	20	20	20
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UP DOWN GC ULSD VS HO SPR SWAP - NEW YORK MERCANTILE EXCHANGE

Code-022A13

FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 42,000 GALLONS)						OPEN INTEREST:		15,739
1,320	254	489	13,657	14,921	15,466	15,664	273	75

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 300)

150	0	0	125	275	275	275	25	25
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

8.4	1.6	3.1	86.8	94.8	98.3	99.5	1.7	0.5
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 39)

1	1	1	24	25	26	26		
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SING JET KERO GASOIL SPR SWAP - NEW YORK MERCANTILE EXCHANGE Code-86465C
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(CONTRACTS OF 1,000 BARRELS) OPEN INTEREST: 4,645

COMMITMENTS

125	0	0	4,520	4,495	4,645	4,495	0	150
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 300)

0	0	0	300	200	300	200	0	100
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

2.7	0.0	0.0	97.3	96.8	100.0	96.8	0.0	3.2
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 27)

1	0	0	18	16	19	16		
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3.5% FUEL OIL RDAM CRACK SPR - NEW YORK MERCANTILE EXCHANGE Code-86565C
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(CONTRACTS OF 1,000 BARRELS) OPEN INTEREST: 2,692

COMMITMENTS

412	0	0	1,824	2,449	2,236	2,449	456	243
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 49)

32	0	0	-7	10	25	10	24	39
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

15.3	0.0	0.0	67.8	91.0	83.1	91.0	16.9	9.0
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 21)

2	0	0	12	12	14	12		
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GASOIL CRACK SPR SWAP - NEW YORK MERCANTILE EXCHANGE Code-86765C
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(CONTRACTS OF 1,000 BARRELS) OPEN INTEREST: 14,395

COMMITMENTS

1,486	2,253	418	8,783	8,499	10,687	11,170	3,708	3,225
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 791)

0	-33	87	486	264	573	318	218	473
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

10.3	15.7	2.9	61.0	59.0	74.2	77.6	25.8	22.4
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 30)

4	3	3	16	22	20	28
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Updated July 18, 2008

GULF # 6 FUEL 3.0% SULFUR SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02165A

							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 BARRELS)							OPEN INTEREST:	
COMMITMENTS							6,794	
0	0	0	6,619	6,489	6,619	6,489	175	305
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:							113)	
0	0	0	235	235	235	235	-122	-122
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
0.0	0.0	0.0	97.4	95.5	97.4	95.5	2.6	4.5
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:							38)	
0	0	0	27	27	27	27		

NY RES FUEL 1.0% SULFUR SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02165B

							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 BARRELS)							OPEN INTEREST:	
COMMITMENTS							7,179	
0	805	0	6,914	6,209	6,914	7,014	265	165
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:							217)	
0	0	0	222	257	222	257	-5	-40
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
0.0	11.2	0.0	96.3	86.5	96.3	97.7	3.7	2.3
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:							35)	
0	2	0	24	23	24	25		

EUR 3.5% FUEL OIL RTD CAL SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02165E

							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 METRIC TONS)							OPEN INTEREST:	
COMMITMENTS							3,620	
0	179	68	3,045	2,891	3,113	3,138	507	482
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:							121)	
0	16	-9	189	242	180	249	-59	-128
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
0.0	4.9	1.9	84.1	79.9	86.0	86.7	14.0	13.3

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 35)
 0 3 3 27 31 30 34

SING FUEL OIL 180 CAL SWAP - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02165G

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 METRIC TONS)						OPEN INTEREST:		3,297
0	60	25	2,682	2,642	2,707	2,727	590	570

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 277)
 0 5 -15 229 230 214 220 63 57

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS
 0.0 1.8 0.8 81.3 80.1 82.1 82.7 17.9 17.3

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 37)
 0 2 1 31 30 32 32

NO. 2 HEATING OIL, N.Y. HARBOR - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-022651

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 42,000 U.S. GALLONS)						OPEN INTEREST:		227,987
29,807	16,839	36,040	130,353	151,259	196,200	204,138	31,787	23,849

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 12,649)
 1,079 3,522 5,583 4,997 1,586 11,659 10,691 990 1,958

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS
 13.1 7.4 15.8 57.2 66.3 86.1 89.5 13.9 10.5

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 133)
 38 21 40 64 64 122 109

SING GASOIL SWAP - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02265J

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1000 BARRELS)						OPEN INTEREST:		7,876
323	200	400	7,103	7,206	7,826	7,806	50	70

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 276)
 25 0 0 325 330 350 330 -74 -54

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

4.1	2.5	5.1	90.2	91.5	99.4	99.1	0.6	0.9
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 43)

2	1	3	29	31	33	34
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SING GASOIL/RDAM GASOIL SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02265T

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		6,490
1,116	516	0	5,149	5,974	6,265	6,490	225	0

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: -25)

0	0	0	75	-25	75	-25	-100	0
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

17.2	8.0	0.0	79.3	92.0	96.5	100.0	3.5	0.0
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 27)

2	2	0	13	16	15	18
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NATURAL GAS - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-023651

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(10,000 MMBTU'S)						OPEN INTEREST:		964,168
217,143	317,791	304,703	363,085	308,216	884,931	930,710	79,237	33,458

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: -7,510)

1,815	13,834	-14,386	819	-5,862	-11,752	-6,414	4,242	-1,096
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

22.5	33.0	31.6	37.7	32.0	91.8	96.5	8.2	3.5
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 234)

94	48	87	77	67	218	166
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MICHCON BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02365A

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)						OPEN INTEREST:		98,340
1,508	7,084	1,690	86,499	80,909	89,697	89,683	8,643	8,657

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: -250)

616	-475	-10	-856	119	-250	-366	0	116
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

1.5	7.2	1.7	88.0	82.3	91.2	91.2	8.8	8.8
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 30)

2	1	2	24	24	26	27		
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PERMIAN BASIS SWAP - NEW YORK MERCANTILE EXCHANGE Code-02365B
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S) OPEN INTEREST: 69,910

COMMITMENTS

3,067	10,021	3,238	57,031	48,058	63,336	61,317	6,574	8,593
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 3,205)

0	-177	387	2,818	2,567	3,205	2,777	0	428
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

4.4	14.3	4.6	81.6	68.7	90.6	87.7	9.4	12.3
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 38)

2	2	3	29	24	32	28		
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M-3 BASIS SWAP - NEW YORK MERCANTILE EXCHANGE Code-02365C
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S) OPEN INTEREST: 107,270

COMMITMENTS

3,388	684	3,687	90,218	94,262	97,293	98,633	9,977	8,637
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 3,352)

3,388	117	253	-949	3,068	2,692	3,438	660	-86
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

3.2	0.6	3.4	84.1	87.9	90.7	91.9	9.3	8.1
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 35)

1	1	1	30	27	32	28		
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TCO BASIS SWAP - NEW YORK MERCANTILE EXCHANGE Code-02365D
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S)								OPEN INTEREST:	94,860
COMMITMENTS									
5,704	2,708	214	74,961	80,126	80,879	83,048	13,981	11,812	
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:					388)				
0	0	0	1,323	459	1,323	459	-935	-71	
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS									
6.0	2.9	0.2	79.0	84.5	85.3	87.5	14.7	12.5	
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:					33)				
2	1	1	21	26	24	27			

MALIN BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02365E

-----						NONREPORTABLE			
NON-COMMERCIAL			COMMERCIAL		TOTAL		POSITIONS		
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	
-----						-----			
(2,500 MMBTU'S)						OPEN INTEREST:		49,849	
COMMITMENTS									
3,020	1,790	5,134	38,106	39,154	46,260	46,078	3,589	3,771	
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						-48)			
0	-364	0	-48	316	-48	-48	0	0	
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS									
6.1	3.6	10.3	76.4	78.5	92.8	92.4	7.2	7.6	
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						24)			
1	1	1	18	18	20	19			

PG&E CITYGATE BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02365F

-----						NONREPORTABLE			
NON-COMMERCIAL			COMMERCIAL		TOTAL		POSITIONS		
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	
-----						-----			
(2,500 MMBTU'S)						OPEN INTEREST:		72,162	
COMMITMENTS									
4,702	3,999	4,086	53,856	54,225	62,644	62,310	9,518	9,852	
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						1,180)			
-62	-1,734	1,220	745	749	1,903	235	-723	945	
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS									
6.5	5.5	5.7	74.6	75.1	86.8	86.3	13.2	13.7	
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						31)			
2	1	1	22	25	25	26			

NGPL TEXOK BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02365G

-----						NONREPORTABLE	
NON-COMMERCIAL			COMMERCIAL		TOTAL		POSITIONS

LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)					OPEN INTEREST:		101,457	
COMMITMENTS								
3,450	3,333	2,963	89,495	89,677	95,908	95,973	5,549	5,484
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:					1,687)			
302	-394	172	1,243	2,063	1,717	1,841	-30	-154
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
3.4	3.3	2.9	88.2	88.4	94.5	94.6	5.5	5.4
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:					48)			
1	3	3	29	38	32	42		

NGPL MID-CON BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02365K

							NONREPORTABLE POSITIONS		
NON-COMMERCIAL			COMMERCIAL		TOTAL				
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	
(2,500 MMBTU'S)							OPEN INTEREST:		116,111
COMMITMENTS									
6,004	1,608	6,349	94,173	94,319	106,526	102,276	9,585	13,835	
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:							720)		
4,577	-181	-613	-3,150	970	814	176	-94	544	
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS									
5.2	1.4	5.5	81.1	81.2	91.7	88.1	8.3	11.9	
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:							34)		
2	1	3	23	26	26	30			

DEMARC BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02365L

							NONREPORTABLE POSITIONS		
NON-COMMERCIAL			COMMERCIAL		TOTAL				
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	
(2,500 MMBTU'S)							OPEN INTEREST:		56,919
COMMITMENTS									
826	2,388	6,381	45,265	37,495	52,472	46,264	4,447	10,655	
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:							17)		
-382	-96	288	173	-156	79	36	-62	-19	
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS									
1.5	4.2	11.2	79.5	65.9	92.2	81.3	7.8	18.7	
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:							28)		
2	2	4	18	17	22	21			

VENTURA BASIS SWAP - NEW YORK MERCANTILE EXCHANGE

Code-02365M

FUTURES ONLY POSITIONS AS OF 07/15/08

-----							NONREPORTABLE		
NON-COMMERCIAL			COMMERCIAL		TOTAL		POSITIONS		
-----			-----		-----		-----		
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	
-----							-----		
(2,500 MMBTU'S)						OPEN INTEREST:		106,445	
COMMITMENTS									
6,321	7,863	19,607	79,790	75,306	105,718	102,776	727	3,669	
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						-1,060)			
985	186	-592	-1,423	-744	-1,030	-1,150	-30	90	
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS									
5.9	7.4	18.4	75.0	70.7	99.3	96.6	0.7	3.4	
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						30)			
4	1	3	17	20	22	23			

DOMINION BASIS SWAP - NEW YORK MERCANTILE EXCHANGE

Code-02365N

FUTURES ONLY POSITIONS AS OF 07/15/08

-----							NONREPORTABLE	
NON-COMMERCIAL			COMMERCIAL		TOTAL		POSITIONS	
-----			-----		-----		-----	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
-----			-----		-----		-----	
(2,500 MMBTU'S)					OPEN INTEREST:		60,364	
COMMITMENTS								
736	39	3,099	50,032	47,853	53,867	50,991	6,497	9,373
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:					-170)			
736	-307	-253	-618	-220	-135	-780	-35	610
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
1.2	0.1	5.1	82.9	79.3	89.2	84.5	10.8	15.5
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:					31)			
1	1	1	27	26	29	27		

WAHA BASIS SWAP - NEW YORK MERCANTILE EXCHANGE

Code-02365O

FUTURES ONLY POSITIONS AS OF 07/15/08

-----							NONREPORTABLE	
NON-COMMERCIAL			COMMERCIAL		TOTAL		POSITIONS	
-----			-----		-----		-----	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
-----							-----	
(2,500 MMBTU'S)						OPEN INTEREST:		96,466
COMMITMENTS								
1,620	3,045	6,960	82,431	82,392	91,011	92,397	5,455	4,069
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						-463)		
-2,911	2,767	572	2,773	-1,934	434	1,405	-897	-1,868
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
1.7	3.2	7.2	85.5	85.4	94.3	95.8	5.7	4.2
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						50)		
2	3	4	33	35	38	39		

TRANSCO ZONE 3 SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-02365S

							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)							OPEN INTEREST:	
COMMITMENTS							54,721	
0	6,171	0	47,711	43,903	47,711	50,074	7,010	4,647
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:							0)	
0	-1,712	0	0	0	0	-1,712	0	1,712
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
0.0	11.3	0.0	87.2	80.2	87.2	91.5	12.8	8.5
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:							22)	
0	2	0	17	14	17	16		

ALBERTA BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-035650

							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)							OPEN INTEREST:	
COMMITMENTS							118,842	
5,723	26,559	16,544	82,075	64,792	104,342	107,895	14,500	10,947
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:							454)	
426	-285	529	112	385	1,067	629	-613	-175
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
4.8	22.3	13.9	69.1	54.5	87.8	90.8	12.2	9.2
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:							39)	
2	5	6	32	26	38	33		

CHICAGO BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-035651

							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)							OPEN INTEREST:	
COMMITMENTS							108,575	
12,638	500	7,430	80,961	87,090	101,029	95,020	7,546	13,555
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:							-69)	
497	500	-931	36	1,663	-398	1,232	329	-1,301
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
11.6	0.5	6.8	74.6	80.2	93.0	87.5	7.0	12.5

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 29)
 4 1 4 21 19 26 23

HENRY HUB BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-035652

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)						OPEN INTEREST:		49,771
COMMITMENTS								
3,680	2,108	0	45,111	46,559	48,791	48,667	980	1,104
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						713)		
3,680	2,108	0	-2,967	-935	713	1,173	0	-460

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

7.4 4.2 0.0 90.6 93.5 98.0 97.8 2.0 2.2

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 26)
 1 2 0 16 15 17 17

HOUSTON SHIP CH BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-035653

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)						OPEN INTEREST:		228,576
COMMITMENTS								
9,675	2,788	7,013	194,180	205,922	210,868	215,723	17,708	12,853
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						248)		
397	-1,604	270	-357	1,558	310	224	-62	24

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

4.2 1.2 3.1 85.0 90.1 92.3 94.4 7.7 5.6

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 57)
 4 4 5 44 42 51 48

NW PIPE ROCKIES BASIS SWAP - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-035654

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2,500 MMBTU'S)						OPEN INTEREST:		235,196
COMMITMENTS								
8,528	14,550	16,662	199,469	196,655	224,659	227,867	10,537	7,329
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						1,776)		
215	-126	-179	3,359	4,227	3,395	3,922	-1,619	-2,146

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

3.6	6.2	7.1	84.8	83.6	95.5	96.9	4.5	3.1
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 48)

3	2	3	41	36	46	39
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PANHANDLE BASIS SWAP - NEW YORK MERCANTILE EXCHANGE

Code-035655

FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S)

OPEN INTEREST: 236,296

COMMITMENTS

6,325	3,631	15,138	206,038	209,753	227,501	228,522	8,795	7,774
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 1,958)

-2,220	2,183	10	4,275	-571	2,065	1,622	-107	336
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

2.7	1.5	6.4	87.2	88.8	96.3	96.7	3.7	3.3
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 65)

3	3	5	56	53	62	58
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SAN JUAN BASIS SWAP - NEW YORK MERCANTILE EXCHANGE

Code-035656

FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S)

OPEN INTEREST: 47,797

COMMITMENTS

0	209	3,191	37,498	35,661	40,689	39,061	7,108	8,736
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 825)

-263	209	342	960	184	1,039	735	-214	90
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

0.0	0.4	6.7	78.5	74.6	85.1	81.7	14.9	18.3
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 22)

0	1	1	19	14	20	15
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SOCAL BASIS SWAP - NEW YORK MERCANTILE EXCHANGE

Code-035657

FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S)

OPEN INTEREST: 203,811

COMMITMENTS

19,451	7,462	15,932	162,704	171,717	198,087	195,111	5,724	8,700
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 3,378)

751	1,090	715	1,791	1,791	3,257	3,596	121	-218
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

9.5	3.7	7.8	79.8	84.3	97.2	95.7	2.8	4.3
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 51)

5	1	6	42	43	48	49
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TRANSCO ZONE 6 BASIS SWAP - NEW YORK MERCANTILE EXCHANGE Code-035658
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S) OPEN INTEREST: 58,925

COMMITMENTS

2,117	4,111	630	46,337	41,469	49,084	46,210	9,841	12,715
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 1,102)

2,117	-373	60	-1,910	1,215	267	902	835	200
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

3.6	7.0	1.1	78.6	70.4	83.3	78.4	16.7	21.6
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 28)

1	2	1	22	20	24	22
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HENRY HUB GAS SWAP - NEW YORK MERCANTILE EXCHANGE Code-03565B
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S) OPEN INTEREST: 3,617,587

COMMITMENTS

1490572	359,248	803,654	1296623	2445636	3590849	3608538	26,738	9,049
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 83,118)

37,453	33,249	21,944	31,877	32,822	91,274	88,015	-8,156	-4,897
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

41.2	9.9	22.2	35.8	67.6	99.3	99.7	0.7	0.3
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 161)

33	16	45	105	101	155	147
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HENRY HUB PENULTIMATE GAS SWAP - NEW YORK MERCANTILE EXCHANGE Code-03565C
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(2,500 MMBTU'S) OPEN INTEREST: 1,117,523
 COMMITMENTS
 119,526 373,639 247,482 746,599 493,894 1113607 1115015 3,916 2,508
 CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 12,728)
 -8,221 56,254 -29,641 50,074 -13,578 12,212 13,035 516 -307
 PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS
 10.7 33.4 22.1 66.8 44.2 99.6 99.8 0.4 0.2
 NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 90)
 26 17 29 44 42 83 76

PJM ELECTRICITY MONTHLY - NEW YORK MERCANTILE EXCHANGE Code-064657
 FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(40 MEGAWATT HOURS PER PEAK DAY)						OPEN INTEREST: 26,860		
1,310	240	432	24,369	25,528	26,111	26,200	749	660
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: -340)								
130	0	40	-550	-440	-380	-400	40	60
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
4.9	0.9	1.6	90.7	95.0	97.2	97.5	2.8	2.5
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 38)								
5	1	3	28	30	33	34		

NYISO ZONE A LBMP SWAP - NEW YORK MERCANTILE EXCHANGE Code-06465A
 FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 400 MEGAWATT HOURS)						OPEN INTEREST: 11,207		
1,280	0	0	9,607	10,951	10,887	10,951	320	256
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 0)								
0	0	0	0	0	0	0	0	0
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
11.4	0.0	0.0	85.7	97.7	97.1	97.7	2.9	2.3
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 20)								
1	0	0	10	14	11	14		

ISO NEW ENGLAND LMP SWAP - NEW YORK MERCANTILE EXCHANGE Code-06465H
 FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
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LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(40 MEGAWATT HOURS PER PEAK DAY)					OPEN INTEREST:		14,789	
COMMITMENTS								
3,190	0	337	10,458	13,938	13,985	14,275	804	514
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						66)		
-20	0	0	50	44	30	44	36	22
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
21.6	0.0	2.3	70.7	94.2	94.6	96.5	5.4	3.5
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						24)		
2	0	2	18	18	20	20		

PJM CAL MONTH OFF PK LMP SWAP - NEW YORK MERCANTILE EXCHANGE Code-06465M
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL							COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT				
(2.5 MEGAWATTS PER OFF PEAK HRS)							OPEN INTEREST:		24,072			
COMMITMENTS												
280	480	480	20,884	21,366	21,644	22,326	2,428	1,746				
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:							-360)					
0	0	0	-360	-360	-360	-360	0	0				
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS												
1.2	2.0	2.0	86.8	88.8	89.9	92.7	10.1	7.3				
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:							24)					
1	1	1	19	18	21	19						

NORTH ILL OFF PK LMP SWAP - NEW YORK MERCANTILE EXCHANGE Code-06465N
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2.5 MEGAWATTS PER OFF PEAK HRS)						OPEN INTEREST:		30,090
COMMITMENTS								
0	240	480	29,574	28,040	30,054	28,760	36	1,330
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						-72)		
0	0	0	-72	-288	-72	-288	0	216
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
0.0	0.8	1.6	98.3	93.2	99.9	95.6	0.1	4.4
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						27)		
0	1	1	23	20	24	21		

CINERGY OFF PEAK LMP SWAP - NEW YORK MERCANTILE EXCHANGE

Code-064A02

FUTURES ONLY POSITIONS AS OF 07/15/08

							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(2.5 MWH X OFF PEAK HOURS PER MONTH)						OPEN INTEREST:		9,486
COMMITMENTS								
120	0	0	7,970	8,338	8,090	8,338	1,396	1,148
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						-120)		
0	0	0	-120	-120	-120	-120	0	0
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
1.3	0.0	0.0	84.0	87.9	85.3	87.9	14.7	12.1
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						21)		
1	0	0	14	14	15	14		

CRUDE OIL, LIGHT SWEET - NEW YORK MERCANTILE EXCHANGE

Code-067651

FUTURES ONLY POSITIONS AS OF 07/15/08

							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		1,344,411
COMMITMENTS								
210,013	187,631	369,766	670,135	686,747	1249914	1244144	94,497	100,267
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						28,133)		
252	-15,064	150,174	-149,702	-133,393	724	1,717	27,409	26,416
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
15.6	14.0	27.5	49.8	51.1	93.0	92.5	7.0	7.5
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						335)		
88	130	137	85	102	268	286		

WTI CRUDE OIL CALENDAR SWAP - NEW YORK MERCANTILE EXCHANGE

Code-06765A

FUTURES ONLY POSITIONS AS OF 07/15/08

							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		127,502
COMMITMENTS								
22,477	13,636	8,140	61,506	47,467	92,123	69,243	35,379	58,259
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						.)		
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
17.6	10.7	6.4	48.2	37.2	72.3	54.3	27.7	45.7
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						21)		
3	4	6	13	14	19	21		

DUBAI CRUDE OIL CALENDAR SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-06765G

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		19,136
COMMITMENTS								
900	600	25	18,011	18,311	18,936	18,936	200	200
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						85)		
0	0	0	-15	-115	-15	-115	100	200
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
4.7	3.1	0.1	94.1	95.7	99.0	99.0	1.0	1.0
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						41)		
1	2	1	30	28	32	31		

WTI CRUDE OIL FINANCIAL - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-06765I

-----							NONREPORTABLE POSITIONS		
NON-COMMERCIAL			COMMERCIAL		TOTAL				
-----			-----		-----		-----		
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	
-----							-----		
(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		187,405	
COMMITMENTS									
16,346	30,293	40,399	119,743	107,437	176,488	178,129	10,917	9,276	
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						-2,006)			
-420	7,794	5,695	-7,103	-15,282	-1,828	-1,793	-178	-213	
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS									
8.7	16.2	21.6	63.9	57.3	94.2	95.1	5.8	4.9	
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						50)			
13	12	23	24	24	48	48			

BRENT FINANCIAL - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-06765J

-----							NONREPORTABLE POSITIONS	
NON-COMMERCIAL			COMMERCIAL		TOTAL			
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
-----							-----	
(CONTRACTS OF 1,000 BARRELS)					OPEN INTEREST:		30,753	
COMMITMENTS								
1,710	7,386	3,000	23,593	18,157	28,303	28,543	2,450	2,210
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						4,689)		
0	5,400	0	5,107	-636	5,107	4,764	-418	-75
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS								
5.6	24.0	9.8	76.7	59.0	92.0	92.8	8.0	7.2

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 22)
 1 3 2 15 16 18 20

BRENT-DUBAI SWAP - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-067650

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		5,882
0	600	0	5,882	5,090	5,882	5,690	0	192

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 90)
 0 0 0 90 -102 90 -102 0 192

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS
 0.0 10.2 0.0 100.0 86.5 100.0 96.7 0.0 3.3

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 24)
 0 2 0 17 14 17 16

PALLADIUM - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-075651

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 100 TROY OUNCES)						OPEN INTEREST:		15,809
10,826	2,897	140	2,548	12,265	13,514	15,302	2,295	507

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: -766)
 32 -500 14 -802 -421 -756 -907 -10 141

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS
 68.5 18.3 0.9 16.1 77.6 85.5 96.8 14.5 3.2

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 105)
 53 12 5 16 27 71 42

PLATINUM - NEW YORK MERCANTILE EXCHANGE
 FUTURES ONLY POSITIONS AS OF 07/15/08

Code-076651

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT
(CONTRACTS OF 50 TROY OUNCES)						OPEN INTEREST:		13,943
8,799	2,464	26	2,016	10,519	10,841	13,009	3,102	934

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: -704)
 -253 -79 -4 -356 -419 -613 -502 -91 -202

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

63.1	17.7	0.2	14.5	75.4	77.8	93.3	22.2	6.7
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 70)

35	7	2	10	19	45	28
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GASOLINE BLENDSTOCK (RBOB) - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-111659

NON-COMMERCIAL						COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	LONG	SHORT	
(CONTRACTS OF 42,000 U.S. GALLONS)						OPEN INTEREST:		244,161			
61,682	16,319	20,597	139,468	195,995	221,747	232,911	22,414	11,250			

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: -2,209)

-2,804	1,142	-410	1,295	-3,034	-1,919	-2,302	-290	93
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

25.3	6.7	8.4	57.1	80.3	90.8	95.4	9.2	4.6
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 181)

62	24	39	76	86	155	135
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SING JET KERO SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-26265D

NON-COMMERCIAL						COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	LONG	SHORT	
(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		4,352			
200	0	0	4,010	4,342	4,210	4,342	142	10			

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 600)

0	0	0	700	700	700	700	-100	-100
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

4.6	0.0	0.0	92.1	99.8	96.7	99.8	3.3	0.2
-----	-----	-----	------	------	------	------	-----	-----

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 26)

2	0	0	18	20	20	20
---	---	---	----	----	----	----

UP DOWN GC ULSD VS HO SPR SWAP - NEW YORK MERCANTILE EXCHANGE
FUTURES ONLY POSITIONS AS OF 07/15/08

Code-022A13

NON-COMMERCIAL						COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT	LONG	SHORT	
(CONTRACTS OF 42,000 GALLONS)						OPEN INTEREST:		15,739			
1,320	254	489	13,657	14,921	15,466	15,664	273	75			

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 300)

150	0	0	125	275	275	275	25	25
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

8.4	1.6	3.1	86.8	94.8	98.3	99.5	1.7	0.5
-----	-----	-----	------	------	------	------	-----	-----

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 39)

1	1	1	24	25	26	26		
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SING JET KERO GASOIL SPR SWAP - NEW YORK MERCANTILE EXCHANGE Code-86465C
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(CONTRACTS OF 1,000 BARRELS) OPEN INTEREST: 4,645

COMMITMENTS

125	0	0	4,520	4,495	4,645	4,495	0	150
-----	---	---	-------	-------	-------	-------	---	-----

CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 300)

0	0	0	300	200	300	200	0	100
---	---	---	-----	-----	-----	-----	---	-----

PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

2.7	0.0	0.0	97.3	96.8	100.0	96.8	0.0	3.2
-----	-----	-----	------	------	-------	------	-----	-----

NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 27)

1	0	0	18	16	19	16		
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3.5% FUEL OIL RDAM CRACK SPR - NEW YORK MERCANTILE EXCHANGE Code-86565C
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(CONTRACTS OF 1,000 BARRELS) OPEN INTEREST: 2,692

COMMITMENTS

412	0	0	1,824	2,449	2,236	2,449	456	243
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CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST: 49)

32	0	0	-7	10	25	10	24	39
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PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS

15.3	0.0	0.0	67.8	91.0	83.1	91.0	16.9	9.0
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NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS: 21)

2	0	0	12	12	14	12		
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GASOIL CRACK SPR SWAP - NEW YORK MERCANTILE EXCHANGE Code-86765C
FUTURES ONLY POSITIONS AS OF 07/15/08

NON-COMMERCIAL			COMMERCIAL		TOTAL		NONREPORTABLE POSITIONS	
LONG	SHORT	SPREADS	LONG	SHORT	LONG	SHORT	LONG	SHORT

(CONTRACTS OF 1,000 BARRELS)						OPEN INTEREST:		14,395	
COMMITMENTS									
1,486	2,253	418	8,783	8,499	10,687	11,170	3,708	3,225	
CHANGES FROM 07/08/08 (CHANGE IN OPEN INTEREST:						791)			
0	-33	87	486	264	573	318	218	473	
PERCENT OF OPEN INTEREST FOR EACH CATEGORY OF TRADERS									
10.3	15.7	2.9	61.0	59.0	74.2	77.6	25.8	22.4	
NUMBER OF TRADERS IN EACH CATEGORY (TOTAL TRADERS:						30)			
4	3	3	16	22	20	28			

Updated July 18, 2008

APPENDIX III

JEFF BENIGAN, New Mexico, Chairman

DANIEL K. AKAKA, Hawaii
BYRON L. PORTMAN, North Dakota
RON WYDEN, Oregon
TIM JOHNSON, South Dakota
MARTY L. LANDREU, Louisiana
MARIA CANTWELL, Washington
KEN SALAZAR, Colorado
TIMOTHY W. MENENDEZ, New Jersey
JANET L. LINCOLN, Arkansas
LEONARD SANDERS, Vermont
JOHN TESTER, Montana

PETE V. DOMINICI, New Mexico
JERRY E. CRAIG, Idaho
LISA MURKOWSKY, Alaska
HOWARD BURR, North Carolina
JIM DEMINT, South Carolina
BOB CORNER, Tennessee
JOHN BARRASSO, Wyoming
JEFF SESSIONS, Alabama
GORDON H. SMITH, Oregon
JAY BURNING, Kentucky
MEL MARTINEZ, Florida

ROBERT M. SPACK, STAFF DIRECTOR
SAM E. FOWLER, CHIEF COUNSEL
FRANK J. MACCHARDI, REPUBLICAN STAFF DIRECTOR
JUDITH K. PRISARENE, REPUBLICAN CHIEF COUNSEL

United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES

WASHINGTON, DC 20510-6150

ENERGY.SENATE.GOV

May 27, 2008

The Honorable Walter Lukken
Acting Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Acting Chairman Lukken:

As you know, American families, farmers and businesses are currently struggling under the weight of record-setting fuel prices. With primary jurisdiction over matters related to national energy policy and energy regulation pursuant to Rule XXV of the Standing Rules of the Senate, the Committee on Energy and Natural Resources has a keen interest in more fully exploring the dynamics underlying the current run-up in oil prices.

To date, the Committee has held two hearings during the 110th Congress related to the role of speculators in U.S. energy markets. In addition, we have held a number of staff-level meetings with the Commodity Futures Trading Commission (CFTC) and other market participants and observers, to better understand the factors contributing to oil prices that have recently exceeded \$133 per barrel. I recognize that tight oil market fundamentals and geopolitics are important determinants of global oil prices. However, I take seriously the testimony of oil industry analysts who have suggested that supply and demand for physical barrels of oil simply cannot fully explain today's prevailing oil prices. Moreover, the lack of comprehensive oil trade data has hampered attempts to quantify the impacts of speculative investment on the prices now imposing hardships on American consumers.

In particular, I remain concerned that the Commission's assertions to date--discounting the potential role of speculation in driving up oil prices--have been based on a glaringly incomplete data set. Increasing trading activity in U.S. crude oil takes place on foreign boards of trade (FBOTs) and in over-the-counter (OTC) markets, for which the CFTC has limited data and oversight authority. Similarly, I am concerned that CFTC analyses classify so-called "swap dealers"--including large investment banks as "commercial" market participants, along side physical hedgers such as oil companies and airlines, rather than as "non-commercial" participants. The practice of including investment banks in the commercial participant category calls into question the CFTC's continued assertion that non-commercial participants, or speculators, follow rather than lead oil price movements.

Finally, I am troubled by the fact the same level of transparency requirements applicable to agricultural commodities are not currently applied to energy trading. Given that the CFTC itself has recently cited escalating diesel and related grain transportation costs as factors contributing to divergent agricultural pricing patterns¹, it would seem that the Commission should exhaust every remedy at its disposal to shed light on current energy market dynamics.

In order to further our inquiry into these matters, the Committee would benefit from a greater understanding of certain aspects of the CFTC's oversight of--and statistical analysis in relation to--energy commodity markets. As such, I would appreciate your response to the attached questions no later than June 10, 2008.

With questions, please contact [REDACTED] or [REDACTED] of the Energy Committee staff, at (202) 224-4971. Thank you for your attention to this request. I look forward to your timely reply.

Sincerely,


Jeff Bingaman
Chairman

cc: Commissioner Michael Dunn
Commissioner Jill E. Sommers
Commissioner Bart Chilton

¹ Statement of Jeffrey Harris, CFTC Chief Economist, Hearing before the Committee on Homeland Security and Government Affairs, U.S. Senate, May 20, 2008.

Questions for the Commodity Futures Trading Commission

Off-Shore Oil Trading:

- 1.) 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.
 - a. 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?
 - b. The CFTC testified before the Committee last month that "there is no evidence that position changes by speculators precede price changes for crude oil futures contracts."² 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?
 - c. 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.
 - d. 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.
 - e. 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.
 - f. 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.
 - g. 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

² Statement of Jeffrey Harris, CFTC Chief Economist, Hearing before the Committee on Energy and Natural Resources, U.S. Senate, April 3, 2008.

information might be governed by existing confidentiality requirements, rest assured the Committee will make arrangements to ensure this information remains private and confidential.

The Swap Dealer Loophole:

- 1.) 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 markets³.
 - a. 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?
 - b. The CFTC has testified before the Committee that “the non-commercial share of total open interest has increased marginally from 31 percent to 37 percent over the past three years⁴”—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?
 - c. 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 (NYMEX) 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.)
 - d. 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.

Transparency Requirements and Conflicts of Interest:

- 1.) 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

³ *ibid*

⁴ *ibid*

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."⁵

- a. 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?
- b. 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.

- 2.) Testimony and various press accounts⁶ 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?
- 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.

⁵ CFTC News Release, December 5, 2006; <http://www.cftc.gov/newsroom/generalpressreleases/2006/pr5262-06.html>

⁶ Davis, A.; *Where Has All the Oil Gone?*, Wall Street Journal, October 7, 2007.

APPENDIX IV

United States Senate

WASHINGTON, DC 20510

June 9, 2008

The Honorable Walter Lukken
Acting Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Dear Mr. Lukken:

On June 6, the price of oil futures increased nearly \$11 per barrel to set a new record of \$138.54. These record increases, which have driven the average price of gasoline nationwide above \$4 per gallon, are hurting American consumers.

We believe that speculation in oil futures by large institutional investors and index funds is inflating the price of oil. The unconstrained and overwhelming entrance of these new commodity investors, who have bet more than 99 percent of their funds on prices rising, must be controlled. We call on you to use existing speculation limit power to constrain the market distortion resulting from this massive influx of capital, and develop a regulatory or legislative proposal to limit the size and influence of investor positions on energy markets.

Recent testimony before numerous Congressional Committees indicates that between 2000 and 2002, major institutional investors began to view commodity futures markets as a new "asset class" suitable to be used in large financial portfolios. Since 2000, investment fund managers have come to believe that commodity index funds act as a hedge against the risk of poor stock market performance and inflation. As Daniel Yergin, one of the nation's leading energy market experts put it: "Oil has become the 'new gold'—a financial asset in which investors seek refuge as inflation rises and the dollar weakens."

Never before have so many institutional investors made large scale investments in commodity markets, but from 2003 to 2008, investments in commodity index funds rose from \$13 billion to \$260 billion. The implications for consumers of this shift are potentially devastating. Unlike

gold, energy and agricultural commodities meet essential needs in the everyday lives of average Americans, and the potential risk that investment strategies will push the price of these goods higher during economic downturns presents a threat to the public welfare that we do not believe is in the best interest of the American public.

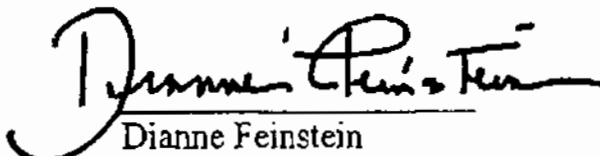
Under the Commodity Exchange Act, the Commission must impose speculation limits on the size of energy trader positions. Crude oil speculative positions are limited to a total of 20 million barrels of oil and 3 million barrels of oil in the last three days of a contract. However, we understand that it has been CFTC's practice to exempt institutional investors from such limits when investors execute their trades through swaps dealers.

We appreciate your recent step to 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. As you conduct this review, we ask that you explore the following with the goal of ensuring the integrity of the marketplace:

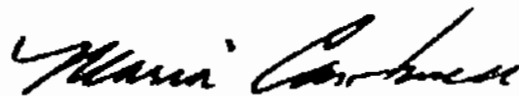
- Use your emergency powers to prevent institutional investors from increasing their positions in commodity futures and commodity future index funds;
- Use the position accountability system to reduce the holdings of any institutional investor whose positions exceed these levels, even if those positions are held through swaps dealers;
- Limit exemptions from position limits for "bona fide hedging" to traders who are hedging risk exposure within the underlying commodity;
- Exclude the hedging of broad macroeconomic risk being pursued by institutional investors from the definition of a bona fide hedge, and;
- Propose regulations that would limit the size and influence of institutional investor positions in commodity markets, and express to Congress what additional legislation would be necessary in order to accomplish this end.

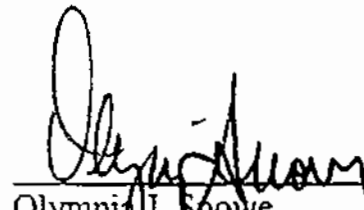
We trust that this review will be conducted as expeditiously as possible, and we hope that you will inform us if it will not be completed by mid July. We have appreciated your efforts to date as Acting Chairman to increase the level of energy market oversight at the Commission, and we are pleased to know that you have opened a number of formal investigations into market manipulation. As the markets continue to evolve, so must our regulation.

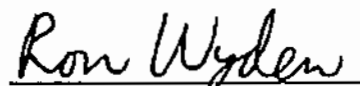
Sincerely,


Dianne Feinstein
United States Senator


Ted Stevens
United States Senator


Maria Cantwell
United States Senator


Olympia J. Snowe
United States Senator


Ron Wyden
United States Senator

CC: Commissioner Michael Dunn
Commissioner Jill E. Sommers
Commissioner Bart Chilton

DF/mbn

APPENDIX V



U.S. Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581

Walter L. Lukken
Acting Chairman

(202) 418-5014
(202) 418-5550 Facsimile
wlukken@cftc.gov

July 8, 2008

The Honorable Dianne Feinstein
United States Senate
Washington, DC 20510

The Honorable Ted Stevens
United States Senate
Washington, DC 20510

The Honorable Maria Cantwell
United States Senate
Washington, DC 20510

The Honorable Olympia J. Snowe
United States Senate
Washington, DC 20510

The Honorable Ron Wyden
United States Senate
Washington, DC 20510

Dear Senators Feinstein, Cantwell, Wyden, Stevens, and Snowe:

Thank you for your June 9, 2008 letter concerning the role of institutional investors and index funds in the oil futures markets. I share your concerns for the dangers that record increases in global oil prices pose to our nation's economy and for the hardships that such increases mean for individual Americans, particularly those with the least ability to pay such high prices. No market participant should be allowed to push prices to artificial levels for their own financial benefit, especially when such manipulation would have a significant impact on consumers.

As conditions in the oil futures market have become increasingly turbulent, the Commission has taken a series of steps to ensure that futures prices are being set by the laws of supply and demand rather than by abusive or manipulative practices. On May 29, the Commission announced a number of energy initiatives, including: (1) an agreement with the United Kingdom Financial Services Authority to expand information-sharing concerning energy commodity contracts with U.S. delivery points as well as requirements for position limits and accountability levels for ICE Futures Europe that are equivalent to U.S. standards; (2) steps to increase transparency and controls in U.S. energy futures markets, particularly with regard to the index funds and swap dealers that were the focus of your letter; and (3) the existence of a nationwide crude oil investigation.

In your letter, you listed five separate actions that the Commission should consider as it examines the trading practices of index traders. All Commissioners and members of the Commission's senior staff have received copies of your letter, and I have asked that your suggestions be explored as we expeditiously consider regulatory steps to take or legislation to recommend with regard to index funds' participation in the futures markets.

The Commission has been actively gathering information about the role of index funds in the markets. In late May, the CFTC utilized its special call authorities to gather more detailed data from swap dealers on the amount of off-exchange index trading in the markets and to examine whether index traders are properly classified for regulatory and reporting purposes. Information requests have been issued, and the CFTC expects to receive shortly more detailed information on index funds and other transactions that are being conducted through swap dealers. With this data, the CFTC will provide findings to Congress as soon as practicable—and no later than September 15th—regarding the scope of commodity index trading in the futures markets and recommendations for improved practices and controls, should they be required.

On June 10th, the Commission held the first meeting of its Energy Markets Advisory Committee to discuss the role of index traders in the energy futures markets. In light of the Committee's expertise on energy market issues, I will send copies of your letter to all of the Committee members and welcome any comments they might have on the measures you have suggested for our consideration.

In addition, the Commission recently announced the formation of an interagency task force to evaluate developments in commodity markets. The task force – which includes staff from the CFTC, the Departments of Agriculture, Energy, and Treasury, the Federal Reserve, the Securities and Exchange Commission, the Federal Energy Regulatory Commission, and the Federal Trade Commission – will examine investor practices, fundamental supply and demand factors, and the role of speculators and index traders in the commodity markets. This task force is meeting regularly and is working to make public a report as soon as possible.

Many of the suggestions in your letter are being actively considered by the Commission as it gathers this necessary information on index trading in our markets. It is my goal to help Congress and this agency make informed decisions regarding these evolving markets and we will continue to expeditiously pursue that end understanding the utmost timeliness of this issue.

Thank you for your leadership on these important issues.

Sincerely,

A handwritten signature in dark ink, appearing to read "Walt L. Lukken". The signature is fluid and cursive, with the first name "Walt" being the most prominent.

Walt Lukken



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5110
Facsimile: (202) 418-5522

Office of the
Inspector General

MEMORANDUM

TO: A. Roy Lavik
Inspector General

FROM: [REDACTED]

DATE: August 19, 2004

SUBJECT: REPORT On Investigation Of An Allegation
That CFTC Employee May Expose Undercover Operatives To Death.

Introduction-Background

The Office of the Inspector General (OIG) received several phone calls informing us that actions of CFTC employees might place two undercover FBI agents' lives at risk. In conversations with [REDACTED], lead attorney in the New York office of the Division of Enforcement (DOE), [REDACTED] alleged that [REDACTED] ordered [REDACTED] to file a case against [REDACTED] independent of a cooperative criminal investigation by the FBI. [REDACTED] alleged that a civil case filing by [REDACTED], who reports to [REDACTED], would alert the principals in [REDACTED] to the possible existence of two FBI undercover operatives. [REDACTED] further alleges that prior criminal actions of the principals in [REDACTED] lead [REDACTED] to believe that these individuals are very likely to kill the undercover operatives. Based on these assertions the OIG initiated an investigation to ascertain the likelihood of this claim by [REDACTED]

Methodology

The OIG's goal in initiating this investigation was to acquire sufficient evidence to determine the validity of [REDACTED]'s assertion that the lives of two undercover FBI agents would be endangered by the actions of [REDACTED] as directed by [REDACTED], DOE's [REDACTED]. Our understanding of DOE's operations led us to conclude that we should interview [REDACTED], DOE Deputy Director in the Washington office. This was based on the fact that [REDACTED] has a direct working relationship with both [REDACTED] and [REDACTED]

Findings

██████████ and ██████████ in the OIG interviewed ██████████ regarding ██████████'s allegations that DOE unilaterally proceeding in its case against ██████████ will jeopardize the lives of two undercover agents. ██████████ unequivocally rejected ██████████'s claim based on the fact that DOE would first consult with the FBI prior to it filing any legal action against ██████████.

Second it was ██████████'s understanding that the FBI may have one confidential informant and possibly one undercover agent participating in the ██████████ investigation. This runs counter to ██████████'s claim that there are two FBI agents acting in an undercover fashion in the ██████████ investigation.

Third the CFTC's Division of Enforcement provided the FBI with some background training regarding the futures industry so that their agents could work undercover in a matter regarding the ██████████ case. The ██████████ case is different from the ██████████ case. As part of DOE's cooperative effort the FBI signed documents, which released the CFTC of any liability if, an FBI agent were to be injured during their futures industry investigation.

Conclusions

As a result of our conversations with ██████████ we conclude that it is doubtful that two FBI undercover lives will be jeopardized by the actions of CFTC employees in the New York regional office of the Division of Enforcement. Consequently, we consider this matter closed.



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5110
Facsimile: (202) 418-5522

Office of the
Inspector General

MEMORANDUM

TO: James E. Newsome
Chairman

FROM: A. Roy Lavik *ARL*
Inspector General

DATE: May 13, 2004

SUBJECT: Investigation of the Hiring of [REDACTED]

In April 2004, the Office of the Inspector General(OIG) learned of management difficulties regarding an employee in the Office of Information Resources Management (OIRM). Further investigation revealed that the individual [REDACTED], a convicted felon, was hired as a Grade 14 Supervisory Information Technology Specialist-Customer Support, a senior position at the Commodity Futures Trading Commission (CFTC) without awareness of his prior criminal record.

The OIG's concern is that, although this relevant information regarding [REDACTED] criminal convictions was readily available and in plain sight in his Official Personnel Folder (OPF) stored with other files safeguarded in the Office of Human Resources (OHR) no one in OHR noticed the information and no action was taken to provide that critical information to the selecting official. Notwithstanding the fact that [REDACTED] pled guilty to three counts of *submitting false claims to the U. S.*, he could have been legally hired at the agency if he had not misrepresented those facts on a required declaration made when hired. These facts lead us to question the entire system currently in place for hiring, processing critical information on new employees, and distributing adequate information to the selecting officials so that they can make a decision that will benefit the agency. This report provides a background on the hiring of [REDACTED], identifies missed early opportunities for detecting misrepresentations of [REDACTED], and prescribes remedies for protecting the agency.

BACKGROUND -CHRONOLOGY

On (b)(6) 1996, [REDACTED] pled guilty in U.S. District Court Eastern District of Virginia to three counts of *submitting false claims to the U. S.* and was placed on

probation for three years.¹ On (b)(6) 1998 Senator Grassley, Chairman of the Subcommittee on Administrative Oversight and the Courts, held hearings on government employee thefts and described (b)(6)'s fraud at the U.S. Department of (b)(6).

On December 4, 2002 Mr. (b)(6), in response to CFTC Vacancy Announcement Number 03-008, sent by email his resume and by fax a copy of a Standard Form 52, Request for Personnel Action, relating to his Air Force service as a civilian. A review of the SF 52 indicates that he separated from the Department of (b)(6) on December 9, 1996, three years later than the March 1993 date claimed on his resume.

On February 23, 2003, CFTC hired (b)(6) for a supervisory position in OIRM with a one year probationary period on the supervisory function. On February 24, 2003, (b)(6) signed and dated a Declaration of Federal Employment Optional Form 306 in which (b)(6) failed to declare his prior felony convictions. By March 3, 2003, according to OHR documents, (b)(6) was required to submit a completed Standard Form 85, Questionnaire for Non-Sensitive Positions, to OHR. The filing of the SF 85 is supposed to trigger the taking of fingerprints and the initiation of a security background check. A copy of the front page of an SF 85 relating to (b)(6) was found in (b)(6) OPF indicating that the form was sent to the Personnel Systems Coordinator on March 24, 2003. No explanation was uncovered for the failure to obtain fingerprints or to initiate the requisite security background check.

Given that (b)(6) is a reinstated government employee, a request for his Official Personnel Folder was sent to the Office of Personnel Management (OPM) records center on April 29, 2003. The OPF was sent to CFTC on May 12, 2003. Shortly after that, (b)(6) OPF arrived at the CFTC. On (b)(6) Standard Form 50, Notification of Personnel Action, in plain view, the following is visible:

"Decision to Separate [from the Department of (b)(6)] for convictions on three felony counts of submitting false claims to the U.S."

Upon receipt of (b)(6) OPF, OHR staff placed CFTC-generated material in (b)(6) OPF and then filed it away in OHR offices in a locked cabinet in a locked room. The OPF was not given to (b)(6), (b)(6) immediate supervisor, for review.

In June 2003, initial employee relations problems surfaced between (b)(6) and his supervisor, (b)(6). Employee relations problems persisted during the third quarter of 2003 and escalated to the point that his supervisor expressed a desire to take action against (b)(6). On October 26, 2003, the CFTC Security Officer reminded (b)(6) that (b)(6) is required to complete the Standard Form 85P, Questionnaire for Public Trust Positions, and promptly submit it to OHR. In November 2003, National Finance Center computer tickler file alerted OHR staff of the upcoming end to (b)(6) supervisory probationary period. (b)(6) OHR Operations, aware of (b)(6) employee relations problems, decided to review (b)(6) OPE. On December 15, 2003, (b)(6) discovered the felony convictions statement in (b)(6)'s OPF stored in OHR. (b)(6) immediately informed (b)(6) Office of Human Resources of his findings.

¹ Case Number 1:96CR00225-001 Date of Judgment November 1, 1996

On December 24, 2003, [REDACTED] fingerprints were taken at the CFTC by the Security Officer. The Security Officer stated that [REDACTED] was not aware at this time of [REDACTED] felony convictions. [REDACTED] fingerprint and security background check documents were then sent to the Office of Personnel Management Investigations Service for processing.

On February 2, 2004, the CFTC Security Officer used the newly acquired PIPS (Personnel Investigation Processing System) to detect possible derogatory information uncovered in the course of processing [REDACTED] background investigation. The Security Officer immediately notified the Director, OHR of his findings. However the [REDACTED] OHR did not inform the [REDACTED] of [REDACTED] knowledge of the felony convictions of [REDACTED] disclosed in [REDACTED] OPF. Soon thereafter, OHR staff received approval to view [REDACTED] files located at the Department of [REDACTED] (b)(6) On February 13, 2004, OHR staff confirmed [REDACTED] felony convictions by viewing [REDACTED] record at the Department of [REDACTED] (b)(6)

[REDACTED] received authorization from OHR and delivered official documents proposing to terminate [REDACTED]. [REDACTED] was escorted off the premises on February 17, 2004.

MISSED OPPORTUNITIES

We identified the following as breakdowns in the new hire system where opportunities existed for early detection of [REDACTED] misrepresentations to the staff at the CFTC.

1. **Failure To Process [REDACTED] Standard Form 85, Questionnaire for Non-Sensitive Positions** - OHR received [REDACTED] Standard Form 85, Questionnaire for Non-Sensitive Positions, and failed to take his fingerprints and initiate the background investigation. If the documents had been collected and sent to OPM for processing as required, [REDACTED] misrepresentations could have been detected by June 2003.
2. **Failure To Supply Official Personnel Folder To Selecting Official**- The selecting official has a direct interest in securing accurate and timely information on new employees. Therefore, when the OPF arrived in May 2003, it should have been given to the selecting official who would have most likely detected the felony convictions prominently stated in the OPF. The selecting official had the greatest interest in hiring a suitable employee. OHR's interest was in simply obtaining the OPF and not necessarily reviewing its content. Consequently, it failed to immediately detect derogatory information prominent in [REDACTED] folder. This is particularly significant in the hiring of grades 14 and above.
3. **General Policy Of Sequestering OPF Is Contrary To The Best Interest Of The CFTC**- A goal of the CFTC is to hire quality individuals to promote the interests of the agency as mandated by Congress. Our legal research found no regulation which bars the selecting official from reviewing a new employee's OPF. His need to know all relevant information regarding a new employee entitles him to the OPF. In fact, not viewing the OPF has led to the hiring and

retention of a convicted felon who was identified by a prominent Senator as an example of government employee fraud. The person who most directly lives with his decision should have the most relevant information available as soon as possible. OHR's policy of not notifying managers of its receipt of the OPF of newly hired employees frustrates this goal. Further, as in this case, it can embarrass the Commission.

CONCLUSIONS AND RECOMMENDATIONS

As a result of this investigation, we conclude that the present system in OHR is faulty and must be repaired. Specifically, selecting officials must be given unconditional and timely access to the Official Personnel Folder of new employees so that they can evaluate its content to determine if their hiring decision was based on complete and accurate information. Our review of the legal requirements imposed by OPM on the receipt and storage of the OPF reveals that there are no legal impediments to the release of the OPF to the selecting official. To achieve this purpose, the Office of the Inspector General recommends that the [REDACTED] Office of Human Resources:

- Personally review the Official Personnel Folder of each recently hired employee who is grade CT-14 and above to determine if the Official Personnel Folder contains pertinent derogatory information or if the contents of the Official Personnel Folder are inconsistent with the claims in the employee's application documents;
- Inform the selecting official of the results of that review;
- Establish a procedure for notifying the selecting official (a sample notification/request for access letter is attached) when the Official Personnel Folder relating to a recently hired employee is received by CFTC, informing the selecting official of his right to review the Official Personnel Folder, and asking if the selecting official would like to review the Official Personnel Folder; and
- Upon receipt of a request from the selecting official to review the Official Personnel Folder, deliver the original Official Personnel Folder to the selecting official's office for review by that official and return to the Office of Human Resources within three business days.

The information that [REDACTED] had been separated from the Department of [REDACTED] (b)(6) for convictions on three felony counts of submitting false claims to the U.S." was available in the Office of Human Resources in May 2003. The policy of the [REDACTED] OHR of keeping the original OPF locked up in OHR led directly to the continued ignorance of this information. When the [REDACTED] OHR was notified on December 15, 2003 by the [REDACTED] OHR Operations that [REDACTED] OPF contained information about [REDACTED] "convictions on three felony counts," [REDACTED] did not share this information with [REDACTED] but rather allowed [REDACTED] to initiate a security background check on [REDACTED] on December 24, 2003 in complete ignorance of the material discovered in [REDACTED] OPF. Not until the Security Officer checked the newly acquired PIPS system on February 2, 2004 did [REDACTED] discover that there was possible derogatory information on [REDACTED]. Not until his February 13, 2004 review of the Air Force files did the [REDACTED] officially learn of [REDACTED] felony convictions -- information already in the possession of [REDACTED] OHR back in December 2003.

More importantly and symptomatic of [REDACTED]'s continuing secrecy obsession, even [REDACTED] supervisor was kept in ignorance of the information contained in [REDACTED] OPF.

This pattern of excessive secrecy maintained by [REDACTED], OHR which kept important information not only from the selecting official but also from [REDACTED] is the base cause of the difficulties which arose in the hiring of [REDACTED]. The Office of the Inspector General recommends that the Chairman:

- Take disciplinary action against [REDACTED], Office of Human Resources for [REDACTED] culpability in creating and maintaining an atmosphere of excessive secrecy which keeps information from officials who need it to perform their functions.

Attachment

OPF Availability Notification and Request Form

The Official Personnel Folder ("OPF") for (name) _____
who recently has been hired by the Commodity Futures Trading Commission in (division
or office) _____, has been forwarded to
the Office of Human Resources ("OHR") by (name's) _____,
former employer, (agency) _____.

As the selecting official with respect to the above employee, his or her OPF may
be disclosed to you when necessary to obtain information relevant to an agency decision
to retain that employee.¹

Please indicate whether or not you wish to review the OPF and forward this form
to the Office of Human Resources. If you mark, "Yes", the original OPF will be
delivered to you for review in your office. Please return the OPF to OHR with three
business days.

_____. No.

_____. Yes. I need to obtain information contained in the above OPF that is relevant
to my decision to retain the above-referenced employee.

Selecting Official

Title

Division

Date

¹ An individual's OPF is covered by the Privacy Act, 5 U.S.C. § 552a, because it is contained in a "system of records" as defined in the Privacy Act. 5 U.S.C. § 552a(a)(5). However, disclosure is permissible in the circumstances described above under an exception to the Privacy Act that permits disclosure for a "routine use." 5 U.S.C. § 552a(b)(3). The routine use applicable here is provided in the system of records that includes the contents of an OPF, i.e., OPM/GOVT-1. Under OPM/GOVT-1, routine use (1), the OPF may be disclosed "when necessary to obtain information relevant to an agency decision to hire or retain an employee...."



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5110
Facsimile: (202) 418-5522

June 17, 2002

OFFICE OF INSPECTOR GENERAL

TO: The Commission

FROM: A. Roy Lavik
Inspector General

ARL

SUBJECT: Report of Investigation of Potential Conflict of Interest re: Madge A. Bolinger

In a seriatim concurrence completed February 5, 2002, the Commission asked its Inspector General to commence an investigation to assure that Madge A. Bolinger, from the time of her beneficial acquisition of prohibited financial interests (October 6, 2000), had not violated federal conflict of interest law and regulations. In response to that request, the Inspector General conducted an investigation. The objective of the investigation was as follows:

To investigate and report to the Commission factual findings with respect to whether Madge Bolinger has, since her beneficial acquisition of prohibited financial interests, participated personally and substantially, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a judicial or other proceeding, application, request for a ruling or other determination, or other particular matter in which, to her knowledge, she or her spouse had a financial interest and in which the particular matter would have had a direct and predictable effect on that interest. See 18 U.S.C. 208; 5 CFR 2635.401 et seq. and 2640.103.

The Office of the Inspector General (OIG) first reviewed the holdings reported in Ms. Bolinger's SF 278, Public Financial Disclosure Report, for calendar year 2000 and checked firms associated with those holdings against National Futures Association records to identify firms, subsidiaries and affiliates that are regulated by the Commission and which would therefore indicate prohibited holdings. Next, using the biweekly status reports, the Office of the Executive Director Project List, and the Office of the Executive Director (OED) Listing of Orders, Interagencies, and Contracts, the OIG identified all matters on which the Office of the Executive Director worked from October 6, 2000 until February 5, 2002 and those firms associated with those matters. The listing of those firms was checked against National Futures Association records to identify firms, subsidiaries, and affiliates that are regulated by the Commission. The list of firms, subsidiaries and affiliates identified in the holdings were matched against the list of firms, subsidiaries and affiliates identified in matters on which the OED worked since October 6, 2000. No matches were identified.

The OIG determined that, during her tenure as Acting Deputy Executive Director and as Acting Executive Director, Ms. Bolinger worked on no matters which concerned any entity related to the holdings of the trust in which she has a beneficial interest. The OIG also determined that during this time, Ms. Bolinger did not personally and substantially participate in any matters of general applicability to the futures industry which would have had a direct and predictable effect on her interests.

Accordingly, this investigation is closed.



U.S. COMMODITY FUTURES TRADING COMMISSION

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Office of the
Inspector General

CONFIDENTIAL MEMORANDUM

TO: Commissioner Holum
Commissioner Erickson

FROM: A. Roy Lavik *ARL*
Inspector General

DATE: June 12, 2002

RE: Conflict of Interest Referral under the Commodity Exchange Act, the
Commission's Part 140 Conduct Rules, Federal Ethics Regulations and 18 U.S.C.
§ 208

Pursuant to a seriatim concurrence signed on February 8, 2002 ("seriatim concurrence"), the Commission asked me to commence an investigation and report to the Commission my factual findings with respect to whether (b)(6)

(1) participated personally and substantially in particular matters in which he knew he had a financial interest, in violation of 18 U.S.C. § 208; and/or

(2) willfully and knowingly failed to report his financial interest in a limited partnership and distributions in the limited partnership on his annual financial disclosure reports in violation of 5 C.F.R. § 2634.701.

Seriatim concurrence (CFTC Feb. 8, 2002).

I have concluded my inquiry into this matter. This report is set forth in three sections. The first section (pages 2-13) sets forth the pertinent legal background against which I conducted my investigation. The second section (pages 13-25) presents my factual findings. The third section (pages 25-28) contains some ~~conclusory~~ comments. These findings should enable the Commission to make a determination about (b)(6) in this matter.

PERTINENT LEGAL BACKGROUND

I. 18 U.S.C. § 208

In pertinent part, 18 U.S.C. § 208 provides:

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, . . . participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he [or] his . . . general partner . . . has a financial interest—

Shall be subject to the penalties set forth in section 216 of this title.

(b) Subsection (a) shall not apply--

* * *

(2) if, by regulation issued by the Director of the Office of Government Ethics, applicable to all or a portion of all officers and employees covered by this section, and published in the Federal Register, the financial interest has been exempted from the requirements of subsection (a) as being too remote or too inconsequential to affect the integrity of the services of the Government officers or employees to which such regulation applies

....

18 U.S.C. § 208.

A. "Particular Matter"

As interpreted by the Office of Government Ethics ("OGE"), the term "particular matter" in 18 U.S.C. § 208 includes

only matters that involve deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters which do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons

5 C.F.R. § 2640.103(a)(1) (2001); 5 C.F.R. § 2635.402(b)(3).

As OGE explained in a recent letter to the CFTC, regulations that affect an entire discrete industry are “particular matters” for purposes of 18 U.S.C. § 208. In its letter, OGE addressed the extent to which 18 U.S.C. § 208 required a former CFTC General Counsel who owned Morgan Stanley Dean Witter & Company (“MSDW”) securities to recuse himself from matters at the CFTC, pending his divestiture of those prohibited holdings. OGE explained that “[i]t is well established that the ‘particular matters’ covered by section 208 do not have to involve specific parties” and that section 208 “applies to matters that are focused on the interests of ‘a discrete and identifiable class of persons.’” Letter dated Mar. 2, 2000 from OGE to Laura Richards, Counsel to the Chairman and Alternate Designated Agency Ethics Official (“ADAEO”) (“OGE Letter”) at 2, *citing* 2 Opinions of the Office of Legal Counsel 151 (1978); 5 C.F.R. § 2640.103(a)(1) (Example 3, involving rules that apply to all pharmaceutical companies); and 5 C.F.R. § 2635.402(b)(3) (Example 2, involving rules that apply to all trucks on interstate highways).

OGE further wrote that the “General Counsel [is] . . . a central figure in resolution of all policy decisions by the [CFTC]” and it “presume[d]” that the particular matters on which the General Counsel would be called to participate in “may well include at least some particular matters of general applicability, such as legislation, policy-making, and rule making, *that are focused on the regulated industry of which MSDW is a member.*” *Id.* (emphasis added). As a result, OGE speculated that, due to the “centrality of [the General Counsel’s] role in resolving all CFTC policy matters, it is conceivable that his recusal from all particular matters affecting the industry of which MSDW is a member could significantly affect his ability to perform the duties of his position.” *Id.* at 3.

B. “Financial Interest”

As interpreted by OGE, the term “financial interest” in 18 U.S.C. § 208(a) means “the potential for gain or loss to the employee . . . as a result of governmental action on the particular matter. The disqualifying financial interest might arise from ownership of certain financial instruments or investments such as stock, bonds, mutual funds or real estate.” 5 C.F.R. § 2640.103(b).

C. “Direct and Predictable Effect” on a Financial Interest

OGE has interpreted 18 U.S.C. § 208 to prohibit an employee from participating personally and substantially in particular matters in which, to his knowledge, he has a financial interest if the particular matter will have a “direct and predictable effect on that interest.” 5 C.F.R. § 2635.402(a). A particular matter will have a “direct” effect on a financial interest if

there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are

speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this subpart.

5 C.F.R. § 2635.402(b)(1)(i).

A particular matter will have a “predictable effect” on a financial interest “if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.” 5 C.F.R. § 2635.402(b)(1)(ii).¹

D. Participating “Personally and substantially”

The prohibition in 18 U.S.C. § 208 applies only to employees who participate “personally and substantially” in a pertinent particular matter. OGE has adopted the following interpretation of that language:

To participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the employee’s involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

5 C.F.R. § 2635.402(b)(4).

E. Mens Rea Elements of 18 U.S.C. § 208

“Section 208(a) is a strict liability offense statute.” *United States v. Hedges*, 912 F.2d 1397, 1400-02 (11th Cir. 1990). A “[s]trict liability crime is defined as a ‘crime that does not require a mens rea element, such as speeding or attempting to carry a weapon aboard an

¹ Although the OGE Letter stated that the former CFTC General Counsel would have to recuse himself from CFTC matters that have a “direct and predictable effect on his financial interest,” it did not elaborate on that particular element of 18 U.S.C. § 208.

aircraft.” *United States v. Hernandez-Landaverde*, 65 F.Supp.2d 567, 571 n.3 (S.D. Tex. 1999), citing *Black's Law Dictionary* 378 (7th ed.1999).

Only one element in Section 208 carries an intent element. Specifically, Section 208(a) prohibits an employee from participating in particular matters in which, “to his knowledge, he . . . has a financial interest.” 18 U.S.C. § 208(a), therefore, “specifically places the mental state requirement of knowledge in the last element and thus requires that the government official have knowledge of the conflicting financial interest.” *Hedges*, 912 F.2d at 1401. As to the other elements of the offense, Section 208 “does not require a mental state.” *Id.* at 1402. Section 208 “sets forth an objective standard of conduct which is directed not only at dishonor, but also at conduct which tempts dishonor.” *Id.* (citing *United States v. Gorman*, 807 F.2d 1299, 1304 (6th Cir. 1986)).

In criminal offenses, to act “knowingly” is to act with “‘knowledge of the facts that constitute the offense’ but not necessarily with knowledge that the facts amount to illegal conduct, unless the statute indicates otherwise.” *United States v. Barbosa*, 271 F.3d 438, 457 (3d Cir. 2001), citing *Bryan v. United States*, 524 U.S. 184, 193 (1998); *United States v. Lynch*, 233 F.3d 1139, 1143 (9th Cir. 2000). “[T]he legal definition of ‘knowledge’ includes the deliberate avoidance of knowledge.” *United States v. Carillo*, 269 F.3d 761, 769 (7th Cir. 2001), citing *United States v. Craig*, 178 F.3d 891, 896 (7th Cir. 1999). This principle is the “conscious avoidance” doctrine:

The conscious-avoidance doctrine is that, with respect to an offense in which the defendant’s knowledge of a given fact is an element, the knowledge element is established if the factfinder is persuaded that the defendant consciously avoided learning that fact while aware of a high probability of its existence, unless the factfinder is persuaded that the defendant actually believed the contrary. The rationale for imputing knowledge in such circumstances is that one who deliberately avoided knowing the wrongful nature of his conduct is as culpable as one who knew.

United States v. Finkelstein, 229 F.3d 90, 95 (2d Cir. 2000) (citations omitted).²

F. Regulatory Exemptions from 18 U.S.C. § 208

An employee who would otherwise be disqualified by 18 U.S.C. § 208(a) may be permitted to participate in a particular matter “where the otherwise disqualifying financial interest is the subject of a regulatory exemption.” 5 C.F.R. § 2635.402(d). OGE has adopted several regulatory exemptions that are relevant to this matter.

² We have not located any cases involving 18 U.S.C. § 208 that apply the conscious avoidance doctrine.

1. Exemptions for Interests in Securities

Prior to April 18, 2002, OGE permitted an employee to participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the ownership by "the employee, his spouse or minor children" of securities if "(1) [t]he securities are publicly traded . . . and (2) [t]he aggregate market value of the holdings of the employee . . . in the securities of all entities does not exceed \$5,000." 5 C.F.R. § 2640.202(a) (2001).³ In addition, OGE permits an employee to participate in any "matter of general applicability, such as rulemaking, in which the disqualifying financial interest arises from the ownership by "the employee, his spouse or minor children of securities . . . if: (i) [t]he securities are publicly traded . . . the market value of which does not exceed: (A) \$25,000 in any one such entity; and (B) \$50,000 in all affected entities." 5 C.F.R. § 2640.202(b) (2001) (to be recodified as 5 C.F.R. § 2640.202(c)).⁴

These *de minimis* exemptions, however, do not apply "to any financial interest held or acquired by an employee . . . in violation of a statute or agency supplemental regulation issued in accordance with 5 C.F.R. § 2635.105." 5 C.F.R. § 2640.204. Prior to February 8, 2002, and for the entire period of time relevant to this inquiry, CFTC Rule 140.735-2(b)(3) provided:

(b) No Commission member or employee shall:

* * *

(3) Have a beneficial interest, through ownership or securities or otherwise, in any person regulated by the Commission, such as a contract market or clearinghouse member thereof, a registered futures commission merchant, any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor or commodity pool operator, or any other person required to be registered in a fashion similar to any of the above under the Commodity Exchange Act or pursuant to any rule or regulation promulgated by the Commission.⁵

³ Effective April 18, 2002, this *de minimis* exemption has been raised from \$5,000 to \$15,000. *Exemption Amendments Under 18 U.S.C. 208(b)(2)*, 67 Fed. Reg. 12,443, 12,445 (Mar. 19, 2002).

⁴ OGE intentionally excluded the interests of an employee's general partner from these two *de minimis* exemptions. See 61 Fed. Reg. at 66,835 (stating that "other provisions in the rule provide broader exemptions" for the interests of general partners).

⁵ Former CFTC Rule 140.735-2 was cross-referenced in the CFTC's supplemental standards of ethical conduct that was issued in accordance with 5 C.F.R. § 2635.105. See 5 C.F.R. § 5101.102 (2002); *Supplemental Standards of Ethical Conduct for Employees of the CFTC*, 58 Fed. Reg. 52,637 (Oct. 12, 1993).

17 C.F.R. § 140.735-2(b)(3) (2001) (footnotes omitted). Such a prohibition applied to CFTC employees unless “compelling countervailing reasons” warranted an exemption. 17 C.F.R. § 140.735-2(a) (2001).⁶

⁶ On February 8, 2002, the CFTC adopted new regulations that loosened the restrictions on CFTC employees concerning the financial interests that they may acquire and retain. New CFTC Rule 140.735-2a(b)(1) still contains a prohibition on holding certain financial interests:

(b) Prohibitions. Except as otherwise provided in this subsection, no member or employee of the Commission shall:

(1) Have a financial interest, through ownership or securities or otherwise, in any person registered with the Commission (including futures commission merchants, associated persons and agents of futures commission merchants, floor brokers, commodity trading advisors and commodity pool operators, and any other persons required to be registered in a fashion similar to any of the above under the Commodity Exchange Act or pursuant to any rule or regulation promulgated by the Commission), or any contract market, board of trade, or other trading facility, or any clearing organization subject to regulation or oversight by the Commission.

Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission, 67 Fed. Reg. 5940 (Feb. 8, 2002) (to be codified at 17 C.F.R. § 140.735-2a(b)(1)) (footnotes omitted). The new CFTC rule, however, also contains a series of exceptions to this prohibition. In pertinent part, new CFTC Rule 140.735-2a(c)(2) provides that this prohibition shall not apply to financial interests in any “corporate parent or affiliate or a person described in [CFTC Rule 140.735-2a(b)(1)] if the operations of such person provide less than ten percent of the gross revenues of the corporate parent or affiliate.” 67 Fed. Reg. at 5941 (to be codified at 17 C.F.R. § 140.735-2a(c)(2)). In addition, new CFTC Rule 140.735-2a(d) specifies that:

(d) . . . Nothing in [CFTC Rule 140.735-2a] shall prohibit a member or employee . . . from:

* * *

(2) Acquiring, retaining, or controlling an otherwise prohibited financial interest . . . where the financial interest was acquired . . . without specific intent to acquire the financial interest . . . ; *provided, however*, that retention of any interest allowed by [CFTC Rule 140.735-2a(c)(3) or (d)] is permitted only where the employee:

(i) Makes full disclosure of any such interest on his or her annual financial disclosure . . . ;

(ii) Makes full written disclosure to the General Counsel . . . , for incumbents, within twenty days of his or her receipt of actual or constructive notice that the interest has been acquired; and

2. Exemptions for Certain Interests of General Partners

The financial interests of “the employee’s general partner” can serve to disqualify an employee under 18 U.S.C. § 208. 5 C.F.R. § 2640.103(c). However, OGE has adopted two exemptions for certain financial interests of an employee’s general partner that would otherwise be disqualifying. OGE Regulation 2640.202(e) provides:

(e) Exemption for certain interests of general partners. An employee may participate in any particular matter in which the disqualifying financial interest arises from:

(1) The ownership of publicly traded securities . . . by the employee’s general partner, provided:

(i) Ownership of the securities is not related to the partnership between the employee and his general partner, and

(ii) The value of the securities does not exceed \$200,000; or

(2) Any interest of the employee’s general partner if the employee’s relationship to the general partner is as a limited partner in a partnership that has at least 100 limited partners.

5 C.F.R. § 2640.202(e) (2001) (to be recodified as 5 C.F.R. § 25640.202(f)).⁷ OGE has explained that securities would be “related to the partnership between the employee and his general partner” within the meaning of 5 C.F.R. § 2640.202(e)(1) when, for example, such securities have been pledged as collateral for the purchase of commercial property owned by the partnership. 5 C.F.R. § 2640.202(e) (Example 1).

G. Referrals of information relating to violations of 18 U.S.C. § 208

“Any information, allegation, or complaint received in a department or agency of the executive branch of the Government relating to violations of title 18 involving Government

(iii) Will be disqualified . . . from participating in any particular matter that will have a direct and predictable effect on the financial interest in question . . .

67 Fed. Reg. at 5941 (to be codified at 17 C.F.R. § 140.735-2a(d)). *See also* 67 Fed. Reg. 5939 (to be codified at 17 C.F.R. § 140.735-1) (“Absent compelling countervailing reasons, all Commission members and employees are subject to all the terms of this section.”).

⁷ In adopting OGE Regulation 2640.202, OGE stated that “the term ‘general partner’ does not have a special or unique meaning for purposes of section 208. The term has a generally accepted meaning within the area of partnership law.” *Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)*, 61 Fed. Reg. 66,830, 66,832 (Dec. 18, 1996). An employee has a “general partner” even if the employee is only a limited partner. 61 Fed. Reg. at 66,836 (OGE declining to adopt an agency recommendation to exempt all the interests of an employee’s general partner in cases where the employee is a limited partner); *see* 5 C.F.R. § 2640.202(e) (Example 2).

officers and employees shall be expeditiously reported to the Attorney General by the head of the department or agency, unless . . . the responsibility to perform an investigation with respect thereto is specifically assigned otherwise by another provision of law.” 28 U.S.C. § 535(a)(1); see 5 C.F.R. § 2638.603.

II. Ethics in Government Act

In its seriatim concurrence, the Commission also requested that I investigate and make factual findings pertaining to 5 C.F.R. § 2634.701. That provision is but one part of a scheme of provisions under the Ethics in Government Act, 5 U.S.C. App. 4 §§ 101 *et seq.* (“EIGA”), that were relevant to my investigation.

A. Financial Disclosure Requirements

EIGA sets forth financial disclosure requirements for certain employees in the executive, legislative and judicial branch. In pertinent part, Section 101 of EIGA provides that any employee “who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character” is required to file a financial disclosure form containing the information described in Section 102 of EIGA. 5 U.S.C. App. 4 § 101(f)(5).

The report used at the CFTC to provide the information required by EIGA Section 102 is OGE Standard Form 278 (“SF 278”), which is titled the “Executive Branch Personnel Public Financial Disclosure Report.” 5 C.F.R. § 2634.601. Schedule A of SF 278 requires the disclosure of certain assets and income, including property interests and assets, earned and other non-investment income, and investment income. Instructions for Completing SF 278, at 4-7.⁸ With respect to information concerning property interests and assets, SF 278 filers are required to

[r]eport the identity and category of valuation of any interest in property (real or personal) held by you . . . for investment or the production of income which has a fair market value which exceeds \$1,000 as of the close of the reporting period. These interests include, but are not limited to, stocks, bonds, pension instruments and annuities, futures contracts, mutual funds, IRA assets, tax shelters, beneficial interests in trusts, personal savings or other bank accounts, real estate, commercial crops, livestock, accounts or other funds receivable, and collectable items held for resale or investment.

Id. at 4. For assets such as stocks, bonds and securities, SF 278 filers are required to “report any holdings directly held or attributable to you . . . from one source totaling more than \$1,000 in value.” *Id.* at 5. Form 278 further informs that that “[t]o report interests of you . . . in . . . a partnership . . . or the ownership of property held for investment or the production of income, identify the character of the ownership interest, and the nature and location of the business or interest.” *Id.* at 5.

⁸ SF 278 also requires the disclosure of other information that is not pertinent to this inquiry.

With respect to investment income, Form 278 filers are required to report “the type and value . . . of any investment income over \$200 from any one source received by or accrued to the benefit of you . . . during the reporting period. For purposes of determining whether you meet the \$200 threshold from any one source, you must aggregate all types of investment income from that same source.” *Id.* at 6. Form 278 specifies that investment income includes “your distributive share of partnership or joint venture income.” *Id.* at 6, 7.

B. Penalties And Referral Provisions

Section 104 of EIGA sets forth the enforcement mechanisms against those who fail to file required reports or who file false reports. 5 U.S.C. App. 4, § 104. EIGA Section 104(a) empowers the Attorney General to bring a civil action against a person who “knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to [EIGA] section 102.” 5 U.S.C. App. 4, § 104(a); 5 C.F.R. § 2634.701(b) (implementing EIGA § 104(a) and referring to filers of public reports under subpart B of 5 C.F.R. Part 2634).⁹

EIGA Section 104(b) authorizes the “head of each agency” to refer to the Attorney General the name of any individual whom the agency head has reasonable cause to believe has “willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported.” 5 U.S.C. App. 4, § 104(b). OGE Regulation 2634.701, to which the Commission directly refers in its seriatim concurrence and which implements EIGA § 104(b), provides:

(a) Referral of cases. The head of each agency . . . shall refer to the Attorney General the name of any individual when there is reasonable cause to believe that such individual has willfully failed to file a public report or information required on such report, or has willfully falsified any information (public or confidential) required to be reported under [5 C.F.R. Part 2634.]

5 C.F.R. § 2634.701(a).¹⁰

⁹ Section 104(a) provides that the maximum civil penalty may not exceed \$10,000. 5 U.S.C. App. 4, § 104(a). OGE Regulation 2634.701(b) provides that the maximum civil monetary penalty that may be assessed shall not exceed \$10,000 for violations that occurred before September 29, 1999, and shall not exceed \$11,000 for any such violation occurring on or after that date. 5 C.F.R. § 2634.701(b).

¹⁰ In addition to authorizing the referral of cases to the Attorney General, EIGA authorizes other actions by agencies. Section 104(c) provides that the head of each agency may take “any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.” 5 U.S.C. App. 4, § 104(c); 5 C.F.R. § 2634.701(d) (authorizing appropriate personnel actions against any individual for failing to file public or confidential reports required by Part 2634, for filing such reports late, or for falsifying or failing to report required information).

EIGA does not expressly authorize criminal actions. OGE regulations that implement EIGA, however, provide that “[a]n individual may also be prosecuted under criminal statutes for supplying false information on any financial disclosure report.” 5 C.F.R. § 2634.701(c). Criminal actions charging violations of the EIGA’s financial disclosure requirements are brought by the Department of Justice (“DOJ”) under the False Claims Act, 18 U.S.C. § 1001.¹¹ That section provides, in pertinent part:

- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive . . . branch of the Government of the United States, knowingly and willfully--
 - (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
 - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
 - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
- shall be fined under this title or imprisoned not more than 5 years, or both.

18 U.S.C. § 1001(a).

Both criminal actions brought pursuant to 18 U.S.C. § 1001(a) and civil actions brought under EIGA § 104(a) contain “knowing” and “willful” elements.¹² While there are numerous criminal cases interpreting 18 U.S.C. § 1001, we have not located any cases that provide helpful interpretations of the legal standards of civil actions brought pursuant to EIGA § 104(a).¹³

¹¹ This information is based on a February 14, 2002 memorandum from [REDACTED], Assistant General Counsel, to [REDACTED], Deputy General Counsel (the “[REDACTED] Memorandum”) concerning EIGA. According to the memorandum, [REDACTED] obtained information concerning Section 1001 prosecutions from applicable case law and discussions with Department of Justice (“DOJ”) attorneys.

¹² The referral provision in OGE Regulation 2634.701(a) uses only the term “willfully.” 5 C.F.R. § 2634.701(a). Nevertheless, we can think of no circumstances where the absence of the term “knowing” in that provision would affect whether a matter should be referred to the Attorney General.

¹³ According to his memorandum, [REDACTED] spoke with a DOJ Attorney who is responsible for Section 1001 prosecutions and who stated that he/she was “unaware of any civil cases involving falsified financial disclosure reports.” [REDACTED] Mem. at 6. Both [REDACTED] and IG Counsel located only one case involving a civil action involving alleged violations of EIGA, which does not provide helpful guidance on the standards of a civil action brought under EIGA § 104(a). See *United States v. Rose*, 28 F.3d 181 (D.C. Cir. 1994) (involving a civil action against a congressman and addressing the Speech or Debate Clause and separation of powers

However, because there does not appear to be any reason why the “knowing” and “willful” elements would be given different meanings in civil and criminal actions, the meaning of these terms appears to be informed by reported decisions that apply and interpret 18 U.S.C. § 1001.¹⁴

“The word ‘willfully’ is sometimes said to be ‘a word of many meanings’ whose construction is often dependent on the context in which it appears.” *Bryan v. United States*, 524 U.S. 184, 191 (1998). “As a general matter, when used in the criminal context, a ‘willful’ act is one undertaken with a ‘bad purpose.’” *Id.* With respect to the term “knowingly,” unless the text of the statute dictates a different result, the term “knowingly” merely requires proof of knowledge of the facts that constitute the offense. *Id.* at 193.

Courts that have applied and interpreted Section 1001 have described the knowing and willful elements in that statute in a variety of ways. The Third Circuit has stated that to establish knowing and willful conduct in the making of a false statement, the government must show that a defendant “acted deliberately and with knowledge that the representation was false.” *United States v. Curran*, 20 F.3d 560, 567 (3d Cir. 1994). Specifically, the government must prove “not only that the statement was false, but that the accused knew it to be false.” *Id.*; *United States v. Hsia*, 176 F.3d 517, 522 (D.C. Cir. 1999) (specifying that the *mens rea* requirement for a Section 1001 violation is that “the defendant knew that the statements to be made were false”); *United States v. Brown*, 151 F.3d 476, 484 (6th Cir. 1998) (an element of a Section 1001 violation is “knowledge of the falsity of the statement”). “Thus, the government is required to show that the misrepresentation was not made innocently or inadvertently.” *Curran*, 20 F.3d at 567. Similarly, the Fourth Circuit approved a jury instruction that defined “‘willfully’ as ‘deliberately and intentionally, as contrasted with accidentally, carelessly or unintentionally.’” *United States v. Daughtry*, 48 F.3d 829 (4th Cir. 1995), *cert. granted and judgment vacated on other grounds*, 516 U.S. 984 (1995).

The Sixth Circuit has stated that “if a defendant ‘deliberately ignore[s] a high probability that [a] form contains material false information,’ the requisite specific intent has been established.” *Brown*, 151 F.3d at 484 (citation omitted). *See also United States v. Abrams*, 427 F.2d 86, 91 (2d Cir. 1970) (requisite intent could be established where one acts with reckless disregard of whether the statements made were true and with a conscious purpose to avoid learning the truth).

There is a split in the circuit courts concerning whether a Section 1001 violation requires a showing of an intent to deceive. In the Third, Seventh and Eighth Circuits, intent to deceive is not a required element of a Section 1001 violation. *See United States v. Leo*, 941 F.2d 181, 200 (3d Cir. 1991); *United States v. Ranum*, 96 F.3d 1020, 1028 (7th Cir. 1996) (*dicta*); *United States v. Hildebrandt*, 961 F.2d 116, 118 (8th Cir. 1992). Moreover, the Supreme Court has noted that Section 1001 “contains no language suggesting any additional element of intent, such as a requirement that false statements be ‘knowingly made . . . with the intent to deceive the Federal Government.’” *United States v. Yermian*, 468 U.S. 63, 69 (1984).

principles).

¹⁴ As [REDACTED] correctly noted, it is likely that the burdens of proof in civil and criminal actions would differ. [REDACTED] Mem. at 6 n.9.

However, the First, Fifth, Sixth and Eleventh Circuits require proof of an intent to deceive. See *United States v. Corsino*, 812 F.2d 26, 29 (1st Cir. 1987); *United States v. Shah*, 44 F.3d 285, 289 (5th Cir. 1995); *United States v. Godwin*, 566 F.2d 975, 976 (5th Cir. 1978); *United States v. Lange*, 528 F.2d 1280, 1286 n.10 (5th Cir. 1976); *United States v. Markey*, 693 F.2d 594, 596 (6th Cir. 1982); *United States v. White*, 765 F.2d 1469, 1472 (11th Cir. 1985).

INVESTIGATORY RECORD

The following description of the investigatory record is based upon interviews with and information collected from: (i) (b)(6) (ii) (b)(6) (iii) (b)(6) and (iv) (b)(6).

I. Persons relevant to this OIG inquiry

A. (b)(6) is the Chief of Staff, Office of Chairman Newsome, CFTC. (b)(6) joined the CFTC in October 1998 as a Special Assistant to Commissioner Newsome. On January 19, 2001, (b)(6) became the Chief of Staff, Office of Acting Chairman Newsome. (b)(6) is a limited partner of the Throop Partners, Limited Partnership ("the Limited Partnership").

B. John S. Throop, Jr. was the grandfather of (b)(6) and was the original general partner of the Limited Partnership. Mr. Throop is deceased.

C. (b)(6) is an aunt of (b)(6) and a daughter of John S. Throop, Jr. (b)(6) is one of the original limited partners of the Limited Partnership and has been the agent for the Limited Partnership during its entire existence. (b)(6) became a general partner of the Limited Partnership on April 8, 2000.

D. (b)(6) is an aunt of (b)(6) and a daughter of John S. Throop, Jr. (b)(6) is one of the original limited partners of the Limited Partnership. (b)(6) became a general partner of the Limited Partnership on April 8, 2000.

E. (b)(6) is the mother of (b)(6) and a daughter of John S. Throop, Jr. (b)(6) is one of the original limited partners of the Limited Partnership. (b)(6) became a general partner of the Limited Partnership on April 8, 2000.

II. The Throop Partners, L.P. ("the Limited Partnership")

A. Execution of, and Amendments to, the Limited Partnership Agreement

On August 7, 1998, John S. Throop, Jr., (b)(6), (b)(6) and (b)(6) entered into a Limited Partnership Agreement, which formed the Throop Partners, L.P. ("the Limited Partnership"). At the inception of the Limited Partnership, Mr. Throop was both a general partner and a limited partner and (b)(6), (b)(6) and (b)(6) were limited partners.

██████████ informed the OIG that, when the Limited Partnership was formed, Mr. Throop did not want to deal with the day-to-day tasks of running the Limited Partnership. Therefore, on the same day that the Limited Partnership was formed, Mr. Throop appointed ██████████ as the agent of the Limited Partnership. As the agent, ██████████ was authorized to conduct the business of the Limited Partnership.

██████████ informed the OIG that, in December 1998, Mr. Throop decided to add his grandchildren to the Limited Partnership. Mr. Throop had five grandchildren: ██████████ and ██████████, the two sons of ██████████; ██████████ and ██████████, the two daughters of ██████████; and (b)(6) ██████████, the son of ██████████ (collectively referred to in this memorandum as "the grandchildren"). On December 31, 1998, the First Amendment to the Limited Partnership Agreement (the "First Amendment") was executed, which admitted the five grandchildren to the Limited Partnership as limited partners. All of the limited partners, including the grandchildren, signed the First Amendment on dates that cannot be determined.

Schedule A to the First Amendment set forth the percentages that each limited partner and general partner owned of the Limited Partnership as of December 31, 1998, and a dollar amount of each partner's "initial capital contribution." ██████████ informed the OIG that "we never got any of the money" that is listed on Schedule A as the initial capital contributions. ██████████ further explained that the initial capital contributions listed did not reflect any actual payments made by any of the partners but, instead, was "just paper."

Specifically, Schedule A to the First Amendment reflects that (i) (b)(6) ██████████ initial participating percentage in the Limited Partnership was 3% and that his initial capital contribution was \$30; and (ii) Mr. Throop's general partnership interest was 1% and his limited partnership interest was 85.5%. ██████████ told the OIG that (b)(6) ██████████ participating percentage purposely was made larger than the percentages of the other four grandchildren. ██████████ explained that the intent behind this action was to ensure that the immediate family of ██████████ was not "penalized" for having only one child.

On January 3, 1999, three days after the First Amendment was executed, the Limited Partnership executed the Second Amendment to Limited Partnership Agreement ("Second Amendment"). All of the partners signed the Second Amendment, including (b)(6) ██████████. Schedule A to the Second Amendment set forth the participating percentage interests of the partners and the "initial capital contribution" for each partner. ██████████ explained that the initial capital contribution did not reflect any actual payments. The Second Amendment increased the percentage interests of each of the limited partners, except for John Throop whose percentage interest decreased. Specifically, Schedule A to the Second Amendment reflects that (i) (b)(6) ██████████ percentage interest in the Limited Partnership increased from 3% to 6% and that his initial capital contribution became \$60; and (ii) Mr. Throop's percentage interest decreased from 85.5% to 72.0%.

On January 3, 2000, the Limited Partnership executed the Third Amendment to the Limited Partnership Agreement ("Third Amendment"). The Third Amendment was signed by

all of the partners, including (b)(6) Schedule A to the Third Amendment sets forth the participating percentage interests of the partners and the "initial capital contribution" for each partner. (b)(6) again explained that the initial capital contribution did not reflect any actual payments. The Third Amendment increased the percentage interests of the limited partners, except for John Throop, whose percentage interest decreased.¹⁵ The Third Amendment reflects that the percentage interest of (b)(6) increased from 6.0% to 7.5% and that John Throop's percentage share decreased from 72.0% to 58.5%.

(b)(6) stated that at some point prior to April 8, 2000, John Throop was diagnosed with lung cancer. On April 8, 2000, John Throop assigned his 1% general partnership interest, in equal one-third shares, to his three daughters, (b)(6), (b)(6) and (b)(6). This assignment was accomplished through the execution of three separate documents, each one signed by all of the limited partners. (b)(6) signed each of the three Assignments on May 1, 2000. When (b)(6), (b)(6) and (b)(6) were each assigned a .33% general partner interest, each sister also owned a 4.5% limited partner interest. (b)(6) stated that, as of this point, she continued in her role as the agent of the Limited Partnership.¹⁶

(b)(6) stated that she did not send the Limited Partnership agreement to any of the grandchildren. (b)(6) also stated that, each time an Amendment was sent around to each of the limited partners for their signatures, all that was required of the limited partners was to sign and return the document. As for the First Amendment, (b)(6) thought that she had sent that document to her sister, (b)(6), and that (b)(6) signed it at a time when he was in Mississippi. (b)(6) could not recall whether she had sent around the Schedule A's with the Amendments. (b)(6) stated that she and her late father, John Throop, did not want to bother the grandchildren with too much paperwork.

(b)(6) explained that the Amendments to the Limited Partnership Agreement "just got circulated around" for everyone's signature. (b)(6) did not have a strong recollection of these Amendments.

In a memorandum dated March 25, 2002 from (b)(6) to the Commission (the 3/25/02 (b)(6) Memorandum") (at page 2) (b)(6) explained that "[m]y grandfather personally chose to set up this [Limited Partnership], which originally consisted of his three daughters as limited partners and himself as the general partner" and that "in December 199[8],

¹⁵ The Third Amendment also added (b)(6), husband of (b)(6), as a limited partner. (b)(6) explained that prior to the Third Amendment, both (b)(6) family and (b)(6) family were represented in the Limited Partnership by themselves and their two children; by contrast, (b)(6) family was represented only by herself and her son Scott. (b)(6) stated that the addition of (b)(6) was to achieve equal representation among the families in the Limited Partnership.

¹⁶ (b)(6) informed the OIG that John Throop died in August 2000. (b)(6) also mentioned that Mr. Throop's estate is not yet settled and that, when it is settled, each of John Throop's three daughters ((b)(6), (b)(6), and (b)(6)) will inherit one-third of their father's 58.5% share in the Limited Partnership.

he chose to add his grandchildren to the LP.” (b)(6) also wrote that “[w]hen additional limited partners were added, they were not consulted, either individually or collectively, as the decision was solely that of my grandfather.” *Id.* at 2. (b)(6) explained to the OIG that he acquired his interest in the Limited Partnership by signing a document that added him as a limited partner. (b)(6) stated that, at the time he signed the document, he did not keep a copy for his records. (b)(6) stated that the document he signed contains no date by his signature. (b)(6) stated that he also has signed amendments to the partnership agreement that increased his percentage interest in the partnership. (b)(6) stated that, in his memory, the amendments (including the Schedule A’s) were mailed to him for his signature.

(b)(6) explained that he never wrote any checks to join the Limited Partnership or to increase his percentage interest. (b)(6) explained that the last documents he signed regarding the Limited Partnership were documents that assigned the general partnership interest to [REDACTED], [REDACTED] and [REDACTED]. (b)(6) explained that those documents were mailed to him for his signature.

B. The Holdings of the Limited Partnership

[REDACTED] stated that, prior to his death, John Throop gave assets to the Limited Partnership every year of its existence.

[REDACTED] described the types of assets held by the Limited Partnership. She explained that the Limited Partnership holds three brokerage accounts. One brokerage account is with Paine Webber, which holds CDs, “equities,” money funds and mutual funds. [REDACTED] explained that the “equities” held by the Paine Webber account consisted of two trust accounts, one with Eaton Vance and a second with Pilgrim Trust. [REDACTED] explained that the Paine Webber account included a money market account, on which she writes checks.

The second brokerage account is with Morgan Keegan and consists of four separate money manager accounts. She explained that the Limited Partnership opened an account with Morgan Keegan in March 1999 and that the fourth money manager was added in November 2000. [REDACTED] stated that the brokers have discretion to buy and sell stocks, at no cost to the Limited Partnership. She further explained that there have been significant changes in the securities held in the accounts over the duration of the partnership. She also stated that the Morgan Keegan account included a money market account. [REDACTED] explained that, every quarter, she talks about the brokerage account with one person at Morgan Keegan, who in turn deals with the four money managers.

[REDACTED] explained that the third brokerage account held by the Limited Partnership is with Vanguard. She stated that that brokerage account holds mutual funds.

[REDACTED] explained that the Limited Partnership also held CD’s and municipal bonds. [REDACTED] further explained that the Limited Partnership also held a checking account at People’s Bank, in Water Valley, Mississippi. [REDACTED] stated that her father, John Throop, used the People’s Bank account, which she closed after his death.

██████████ explained that general changes in the holdings of the Limited Partnership require the signatures of all three general partners, but that the money managers have discretion to buy and sell individual securities.

The OIG has obtained and analyzed documents pertaining to the holdings of the Limited Partnership. Table 1, attached, shows for various dates (i) the value of (b)(6) total interest in the Limited Partnership; (ii) his distributive share of income as reported on Schedules K-1; (iii) and distributions made to him, as reported on Schedules K-1.

From December 31, 1998, when (b)(6) became a limited partner of the Throop Partners, L.P., until February 8, 2002, the date of the Commission's seriatim concurrence,¹⁷ the holdings of the Limited Partnership included securities of companies that were regulated by the Commission or whose subsidiaries were regulated by the Commission.¹⁸ All such securities were held in one of the four money manager accounts at Morgan Keegan. Table 2, attached, shows as of the dates listed: (i) the cumulative value of these holdings; (ii) the value of (b)(6) (b)(6) percentage share of such holdings; and (iii) the value of the general partners' percentage share of such holdings.¹⁹

C. Management of the Limited Partnership and Communications Among and Between the Limited Partners

██████████ stated that the Limited Partnership employs accountants²⁰, brokerage account managers²¹ and a lawyer.²² ██████████ stated that, in general, she is the only person who talks about the Limited Partnership with these employees. She stated that recently, she and her two

¹⁷ The OIG interprets the Commission's referral as requesting an inquiry concerning (b)(6) (b)(6) conduct from December 28, 1998 until February 8, 2002. Accordingly, the OIG does not make any factual findings concerning (b)(6) financial interests held after February 8, 2002.

¹⁸ The securities of companies that were held by the Limited Partnership and that are regulated by the CFTC include ABN Amro Holdings, Allied Zurich PLC, American Financial Group, American International Group, Archer-Daniels-Midland Co., Bank of America, Bank One Corp., Charles Schwab, Citigroup, Deutsche Bank AG ADR, Dow Jones & Co., Inc., Fleet Boston Financial Corp., HSBC Holdings PLC ADR, ING Group NV Spons., Knight Ridder, Inc., Lehman Brothers, Merrill Lynch & Co., Mitsubishi Tokyo Financial Corp., Morgan JP & Co. Inc., Prudential Financial Inc., Society Gen. ADR, Stanley Dean Witter Discover, Union Planters and Zurich Financial Services ADR.

¹⁹ As of each of the dates listed in Table 2, the largest interest that (b)(6) had in any single regulated person was a \$1,260 interest in Citigroup as of December 31, 2000.

²⁰ ██████████, C.P.A., ██████████, C.P.A. (principal accountant for the Limited Partnership), ██████████, (601) ██████████ or (800) ██████████.

²¹ ██████████, Morgan Keegan, Jackson, MS, (601) ██████████ / (800) ██████████; ██████████, UBS Paine Webber, Inc., Jackson, MS, 601-██████████ / 800-██████████.

²² ██████████, Esq., Brunini, Grantham, Grower & Hewes, Jackson, MS, (601) ██████████.

sisters met with each of the stockbrokers and the accountant in Mississippi. [REDACTED] further stated that she is sure that there is no correspondence about the Limited Partnership between any of the limited partners (other than herself) and the accountants, lawyers or brokers. [REDACTED] expressly stated that (b)(6) [REDACTED] has never spoken with any of the employees of the Limited Partnership.

[REDACTED] stated that she is not required to send out materials to any of the limited partners. [REDACTED] stated that she prepares a monthly "summary report" of the Limited Partnership, which she sends only to the general partners (i.e., her two sisters). The monthly summary reports include information concerning the current values of the partnership holdings and the total value of those holdings; deposits and withdrawals; and a summary paragraph addressing the changes that have occurred during the month covered.

The summary reports do not include details of the securities held by the Morgan Keegan account or any other account. [REDACTED] also stated that she has not provided details of the holdings to the two other general partners. Moreover, [REDACTED] stated that the brokerage companies with which she works have offered to send account statements to all general partners but that her sisters have declined that offer.

[REDACTED] stated that, prior to her sending information to (b)(6) [REDACTED] in January 2002, she has never sent to any of the grandchildren information about the holdings of the Limited Partnership. [REDACTED] further stated that she has never even asked any of the grandchildren if they would like to receive detailed information about the Limited Partnership, such as account statements. [REDACTED] stated that prior to January 2002, she had not discussed the holdings of the Limited Partnership with (b)(6) [REDACTED]

[REDACTED] stated that she was sure that, other than correspondence between her and her sisters and correspondence between her and (b)(6) [REDACTED] in January 2002, there was no correspondence about the Limited Partnership between the limited partners.

[REDACTED] was asked by the OIG whether the Limited Partnership holds any meetings. [REDACTED] stated that the Limited Partnership held a meeting/family gathering in September 2001 in Denver, CO. [REDACTED]'s summary report covering September 2001 refers to the expenses reimbursed to partners to attend this gathering as "wedding trip expenses." [REDACTED] told the partners that "nothing would be happening" with the Limited Partnership in the near future. [REDACTED] further explained at that September 2001 meeting that each partner should be prepared to pay taxes on their respective earnings but that the Limited Partnership would not be making any distributions that year. [REDACTED] stated that none of the limited partners has ever asked for any distributions and that it is "understood that they're not supposed to ask." [REDACTED] stated that (b)(6) [REDACTED] attended that family gathering in Colorado and that the Limited Partnership reimbursed him for the travel expenses he incurred.

[REDACTED] stated that there have been a few other dinner meetings in Mississippi among some of the partners. Although matters related to the Limited Partnership may have been discussed, the primary purpose of such meetings was to be a family gathering. [REDACTED] could not recall whether (b)(6) [REDACTED] attended any of those gatherings.

██████████ explained that, every year, the partners are taxed on the earnings of the Limited Partnership. She explained that the accountant for the Limited Partnership prepares for and distributes to each partner an IRS Schedule K-1. IRS Schedule K-1 is titled "Partner's Share of Income, Credits, Deductions, etc." and is the form on which certain information pertaining to the limited partner's interest in the Limited Partnership is reported to the IRS. Specifically, the form reports: (i) the partner's percentage of profit sharing, loss sharing and ownership of capital; (ii) the value of the partner's capital account at the beginning and end of the year; (iii) the value of the partner's share of income or loss; and (iv) distributions received by the partner. The Schedule K-1's completed for (b)(6) do not include information concerning the specific holdings of the Limited Partnership.

██████████ stated that ██████████ is the agent of the Limited Partnership and is "pretty much in charge." ██████████ stated that ██████████ sends out via e-mail a monthly report about the Limited Partnership. ██████████ stated that she receives nothing in connection with the Limited Partnership but this monthly report. ██████████ stated that she does not discuss the holdings with ██████████ and that she does not know details of the holdings. ██████████ stated that she does not want to receive the details of the holdings.

██████████ stated that her sister ██████████ was "the head" of the Limited Partnership. ██████████ explained that ██████████ receives all of the information from the brokers with whom the Limited Partnership deals. ██████████ stated that she does not receive any of the statements from the brokers and that she expressly chose not to receive such statements. Instead, ██████████ stated that she only receives a two-page monthly report from ██████████. ██████████ stated that the only exception to this was one occasion in April 2001, when all three general partners (██████████, ██████████ and ██████████) met in Jackson, Mississippi with some of the brokers that work for the Limited Partnership.

██████████ stated that the only time she has attempted to discuss the Limited Partnership with anyone besides ██████████ or ██████████ was when she tried to talk to her husband about it. ██████████ explained, however, that her husband did not want to know any details about the Limited Partnership and that he preferred to leave the management of the partnership to ██████████, ██████████ and ██████████.

██████████ stated that she has never forwarded to (b)(6), or anyone else, information about the holdings of Limited Partnership or the monthly status reports prepared by ██████████. ██████████ stated that she never even thought that (b)(6) participation in the Limited Partnership might cause a potential problem. ██████████ regretted not providing (b)(6) with information about the Limited Partnership and stated that she felt like the CFTC's inquiry was her own fault.

(b)(6) stated that the grandchildren of Mr. Throop who were limited partners are treated like an "afterthought." (b)(6) explained that the Limited Partnership was presented to him as an estate-planning tool for his grandfather and a means "to get the estate down." (b)(6) stated that the limited partners (in this context, referring to all limited partners except

██████████, ██████████ and ██████████ were not really consulted about anything regarding the Limited Partnership.

In a memorandum dated January 17, 2002 from ██████████ (b)(6) to ██████████ Assistant General Counsel ██████████ (the "1/17/02" (b)(6)), (b)(6) wrote that "[u]ntil recently, my knowledge of the LP was limited. I never asked about, nor was told of, what types of investments, if any, were held by the LP." (b)(6) told the OIG that to his knowledge he never received information prior to January 11, 2002 concerning how much his percentage interest in the Limited Partnership was worth. (b)(6) said that, prior to reading the White House forms related to his potential promotion, he lacked the curiosity about the Limited Partnership to acquire any information about it. (b)(6) stated that he could have obtained the information very easily had he asked for it.

(b)(6) stated that he has never had any conversation with any of the accountants or brokers for the Limited Partnership. (b)(6) was not aware whether the Limited Partnership consulted with any attorneys. (b)(6) was asked by the OIG whether his family ever discussed the Limited Partnership at family gatherings. (b)(6) stated that the Limited Partnership is not something that he recalls talking about at family gatherings.

(b)(6) stated that he never received any materials regarding the Limited Partnership other than the documents he was asked to sign (the amendments and the assignments) and the K-1 tax forms that he has received. (b)(6) explained that he received the K-1's yearly, starting in calendar year 1998.

(b)(6) explained that, to prepare his taxes, he keeps copies of the K-1 tax forms, a file of check stubs and anything that needs to be kept for the purpose of preparing his taxes. (b)(6) sends everything to an accountant, whose name is listed on his 1040 tax returns.²³ (b)(6) stated that, for the most part, he looks at the "bottom line" of his taxes to see if he owes taxes or is owed a refund and signs the document. (b)(6) stated that he was "not good" at tax matters.

(b)(6) is under consideration for a position at the CFTC that requires him to complete a White House form titled "Personal Data Statement Questionnaire" ("PDSQ"). (b)(6) wrote in the 01/17/02 (b)(6) that Question 9 of the PDSQ requests:

Please list all corporations, partnerships, trusts, or other business entities with which you have ever been affiliated as an officer, director, trustee, partner, or holder of a significant equity or financial interest (i.e., any ownership interest of more than 5%), or whose decisions you had the ability to influence. Please identify the entity; your relationship to the entity; and dates of service and/or affiliation.

1/17/02 (b)(6) Mem. at 1. (b)(6) wrote that "[i]n reading this question, I thought of the [Limited Partnership] and immediately called my aunt, ██████████. . . . Our initial

(b)(6) tax returns list Fritsche & Thomas, P.C., (703) 289-0270, as the tax form preparer.

conversation took place on . . . January 10, 2002. I learned through this conversation that my interest in the [Limited Partnership] was 7.5%." *Id.* (b)(6) further wrote that, on January 11, 2002, (b)(6) faxed to him copies of recent brokerage account statements, which revealed that the Limited Partnership owned publicly-traded stocks of several entities that the CFTC regulates. *Id.* (b)(6) wrote that "[t]his was my first exposure to and/or knowledge of those equity holdings." *Id.*

D. Distributions from the Limited Partnership

(b)(6) stated that many of the checks issued by the Limited Partnership were for John Throop and his personal needs. Based on the amounts that John Throop withdrew, (b)(6) and the accountant calculated the amounts of the distributions owed to the other limited partners and (b)(6) issued checks in such amounts to the limited partners. (b)(6) explained that there is no way any of the limited partners can receive any money out of the Limited Partnership unless she issues a check.

(b)(6) stated that the Limited Partnership has issued two distributions to the limited partners, including (b)(6). The first distribution to (b)(6) was issued March 20, 2000 in the amount of \$4,116.00 (reflecting a distribution for 1999). The second distribution was issued to (b)(6) on March 28, 2001 in the amount of \$5,109.45 (reflecting a distribution for 2000).

(b)(6) stated that she, as agent for the Limited Partnership, has also written checks from the Limited Partnership checking account to (b)(6) to cover certain travel expenses. Specifically, (b)(6) stated that in September 2001 there was a gathering of all the partners in Denver, Colorado. (b)(6) stated that she issued two checks to (b)(6) in connection with this trip: (i) a check for \$116.18 to cover certain unspecified travel expenses; and (ii) a second check for \$725 to cover the cost of his airline tickets to Denver.

(b)(6) explained that he has received two distributions, in the form of checks, from the partnership. He stated that he received a distribution of \$4,116 in March 2000 and a distribution of \$5,109.45 in April 2001. While he was not sure, (b)(6) stated that he believes he received these checks from his aunt, (b)(6). (b)(6) stated that he did not know how the partnership distributions were calculated. He assumed that the dollar amounts of the distributions were calculated based on the limited partners' percentage interests.

(b)(6) also stated that he received a check from the Limited Partnership for approximately \$700. (b)(6) stated that this check was to reimburse him for his air fare expense that he incurred for a trip to Denver. (b)(6) explained that the entire family was paid to travel to Denver because his aunt's son was getting married. (b)(6) stated that he had received a check for approximately \$100 as reimbursement for expenses he incurred during that trip.

III. (b)(6) Financial Disclosures

(b)(6) joined the CFTC on October 12, 1998 as a Special Assistant to Commissioner James Newsome. As a "Schedule C" employee,²⁴ (b)(6) was required to file an Executive Branch Personnel Public Financial Disclosure Report, Standard Form 278 ("SF 278"). CFTC Instruction 481-1 (Mar. 1994). (b)(6) was required to file his first SF 278 within 30 days after assuming his position and, after his initial filing, no later than May 15, annually. Given that (b)(6) became a limited partner on December 31, 1998, the first time (b)(6) would have been required to report information pertaining to the Limited Partnership was when he filed his SF 278 in the spring of 1999.

On March 29, 1999, (b)(6) submitted his "New Entrant" SF 278, which covered calendar year 1998. On his New Entrant disclosure report, (b)(6) disclosed: (i) the salaries that he and his spouse earned in 1998; (ii) assets held in a federal credit union savings account, and the interest accrued on such assets; and (iii) assets held in a mutual fund and income generated by such assets. (b)(6) did not disclose his interest in the Limited Partnership. In addition, handwritten notes, such as the underlining and circling of words, appear on a part of (b)(6) SF 278 that describes the period of time that should be reflected in the report, including the reporting period for assets owned and income received.²⁵

On April 24, 2000, (b)(6) filed an SF 278 that covered calendar year 1999. On that SF 278, (b)(6) disclosed: (i) the salary that his spouse earned in 1999; (ii) assets held in a federal credit union savings account, and the interest accrued on such assets; and (iii) assets held in a mutual fund and income generated by such assets. (b)(6) did not disclose his interest in the Limited Partnership on this form.

On May 1, 2001, (b)(6) filed an SF 278 that covered calendar year 2000. On that SF 278, (b)(6) disclosed: (i) the salary that his spouse earned in 2000; (ii) assets held in a federal credit union savings account, and the interest accrued on such assets; and (iii) assets held in a mutual fund and income generated by such assets. (b)(6) did not disclose his interest in the Limited Partnership on this form or the \$4,116 distribution he received in calendar year 2000.²⁶

(b)(6) stated that it did not occur to him when he was filling out his financial disclosure forms that his interest in the Limited Partnership might be relevant to that form. (b)(6)

²⁴ Upon specific authorization by OPM, agencies may make appointments to positions which are policy-determining or which involve a close and confidential working relationship with the head of an agency or other key appointed officials. Positions filled under this authority are excepted from the competitive service and constitute Schedule C. 5 C.F.R. § 213.3301; 5 C.F.R. § 6.2.

²⁵ That section of SF 278 instructs that "[t]he reporting period for income . . . is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing."

²⁶ Disclosures that (b)(6) made in his SF 278 filed in 2002 are outside the scope of this OIG inquiry.

(b)(6) stated that when completing this form he uses the form he filled out in the prior year as a model and looks to add only new information. (b)(6) stated that he failed to disclose his interest on his New Entrant Form and that that was a mistake that carried through in subsequent years.

(b)(6) was asked by the OIG whether the recent inquiry regarding the financial interests of (b)(6), a former colleague of (b)(6) in Chairman Newsome's office, triggered anything in his mind about the potential relevance of his own interest in the Limited Partnership to his obligations concerning financial disclosure and the avoidance of conflicts-of-interest.²⁷ (b)(6) acknowledged that he was familiar with the issue concerning (b)(6) but stated that that matter did not trigger any response in his own mind concerning the Limited Partnership. (b)(6) stated that the PDSQ is the first document that made him think that he should obtain specific information concerning the Limited Partnership.

(b)(6) wrote that "[w]ithout detailed knowledge of the investments, I was unaware that it needed to be included on my yearly financial statement [W]hen new information became available to me, I disclosed it, voluntarily and immediately. Filing incomplete financial disclosure forms was truly an inadvertent oversight." 3/25/02 (b)(6) Mem. at 3. (b)(6) further wrote that his failure to provide complete financial disclosure reflected "a simple mistake based on ignorance." *Id.* at 4.

(b)(6) provided the following explanation of inconsistencies between his financial disclosure documents and his tax filings:

While income or loss listed on my tax returns was derived from my percentage ownership in the LP, the filings did not identify the individual companies whose stocks were held by the LP. I did not prepare my own taxes or the K-1s, which was done by an accounting firm employed by the LP. The accounting firm prepared the K-1s for all general and limited partners. As noted, the K-1s did not reveal specific investment information, only cumulative data.

3/25/02 (b)(6) Mem. at 4. As explained above (b)(6) wrote in his January 17, 2002 memorandum that his "first exposure to and/or knowledge of [the] equity holdings" of the Limited Partnership was on Friday, January 11, 2002. Immediately thereafter, on Monday, January 14, 2002, (b)(6) contacted (b)(6) to inquire as to whether or not the LP was something that should have been listed on his financial disclosure form.

²⁷ On June 26, 2001, the OIG was asked by the Commission to conduct an inquiry concerning whether (b)(6), who at the time was serving as an assistant to Acting Chairman Newsome, had participated personally and substantially in particular matters in which he had a financial interest in violation of 18 U.S.C. § 208. The OIG concluded that (b)(6) had not violated 18 U.S.C. § 208.

IV. (b)(6) Participation in Particular Matters

(b)(6) apprised the OIG about his assignments and responsibilities. (b)(6) explained that he served as a Special Assistant to Commissioner Newsome from October 1998 to January 19, 2001. (b)(6) stated that during this period of time he handled "just about everything" for Commissioner Newsome that came out of the CFTC's Division of Economic Analysis. (b)(6) explained that during this time period he also worked on legislative-type activity; all CFTC budget activities; and occasional projects that emanated from the CFTC's Division of Trading and Markets.

(b)(6) provided the OIG with a list of the Seriatim Completed during FY99, FY00 and FY01 and highlighted all matters with which he may have been involved while serving as a Special Assistant, even if his participation was extremely limited. Table 3 (attached) lists the matters on which (b)(6) worked from December 31, 1998, when (b)(6) first acquired an interest in the Limited Partnership, until January 19, 2001, and that were of general, or potentially general, applicability to participants in the futures industry.

(b)(6) provided two comments about his work from December 1998 through January 19, 2001 that appear to reflect his view that his participation in matters during that period was not substantial. First, (b)(6) stated that, of all the matters on which he worked during that time period, there were dissents on only 14 of those matters and no outcomes that would have turned out differently had Commissioner Newsome changed his vote. Second, (b)(6) noted that an evaluation of his participation in matters while he worked as an assistant to Commissioner Newsome should reflect the fact that the Commissioners do not set the agenda for the CFTC.

(b)(6) explained that he became the Chief of Staff when James Newsome was appointed Acting Chairman on January 20, 2001 and that his responsibilities changed. (b)(6) explained that he no longer was involved in reading all of the materials provided by the Division of Economic Analysis. (b)(6) explained that he was involved in any kind of "procedural decision," such as extending a comment period; legislative work; correspondence from Chairman Newsome; staff appointments; and the CFTC restructuring. (b)(6) explained that he was also involved in any matter that was "new," specifically all of the major rulemakings related to the Commodity Futures Modernization Act ("CFMA"). (b)(6) specified that one of these rulemakings involved "transaction-facility" rules and that such rules would affect the way futures commission merchants conduct business on an exchange. (b)(6) explained that he has worked with the SEC on security futures products issues. (b)(6) also stated that all of the rulemakings relate to the CFMA and include work regarding new contract markets and retail swaps.

(b)(6) provided the OIG with a list of the Seriatim Completed during FY01 and FY02 (through January 17, 2002, when (b)(6) recused himself from CFTC policy matters) and highlighted all matters with which he may have been involved while serving as Chief of Staff, even if his participation was extremely limited. Table 4 lists matters on which (b)(6) worked from January 20, 2001 until January 17, 2002 and that were of general, or potentially general, applicability to participants in the futures industry.

(b)(6) also submitted to the OIG a document that lists the following "programmatic matters" on which (b)(6) states that he had "specific involvement": (i) CFMA implementation rules, including individual rules regarding transaction facilities and clearing organizations, and joint rules promulgated by the Commission and the SEC for the trading of security futures products; (ii) Nasdaq/Liffe Designated Contract Market Application; (iii) London Clearing House Designated Clearing Organization (DCO) application; (iv) Energy Clear DCO application; (v) Chicago Mercantile Exchange \$25 delivery fee issue; and (vi) retail swaps report.²⁸

(b)(6) stated that his involvement on matters while serving as Chief of Staff sometimes has been very limited. (b)(6) explained that sometimes his only involvement on an issue is when a member of Chairman Newsome's staff, such as [REDACTED], explains an issue that the Commission would be voting on. (b)(6) stated that when he was a Special Assistant to Commissioner Newsome, his involvement in matters was more substantive than it is now.

(b)(6) stated that, during his entire tenure at the Commission, he has not participated in enforcement actions or opinions matters.

V. Other considerations

On January 14, 2002, (b)(6) voluntarily brought this matter to the attention of the Commission's Ethics Officer. (b)(6) states that he did so "immediately upon being informed of the LP's specific holdings." 3/25/02 Parsons Mem. at 2. On January 17, 2002, (b)(6) recused himself from all policy matters of the Commission.

On March 25, 2002, (b)(6) petitioned the Commission to dismiss this investigation. (b)(6) wrote that one reason for closure is that "the Commission recently revised its ethics rules, which effectively eliminates the conflict of interest issue." *Id.*

CONCLUSION

This memorandum sets forth a summary of the investigatory record I have compiled pursuant to the Commission's request. I do have a few additional comments relevant to this issue.

1. There is no dispute that several of the elements of an offense under 18 U.S.C. § 208 and 18 U.S.C. § 1001 are satisfied. For example, with respect to 18 U.S.C. § 208, it is clear that (i) Mr. Parsons is "an officer or employee of the executive branch of the United States Government" under 18 U.S.C. § 208; (ii) that all of the matters identified in Tables 3 and 4, as well as (b)(6) legislative work, were "particular matters," within the meaning of 18 U.S.C. § 208; (iii) that (b)(6) and his general partners, on at least some of the particular matters on

²⁸ The OIG understands this statement by (b)(6) to reflect those matters on which Mr. Parsons would agree that his participation was significant.

which he worked, had a "financial interest" within the meaning of 18 U.S.C. § 208. With respect to 18 U.S.C. § 1001 and EIGA § 104(a), there is no dispute that (b)(6) did not report information that was required to be disclosed on his SF 278 in 1998, 1999 and 2000.

2. I make no conclusions concerning whether (b)(6) participated in particular matters that would have had a "direct and predictable effect" on his or his general partners' financial interests, within the meaning of 5 C.F.R. § 2635.402(a). Having worked on many of the same particular matters on which (b)(6) worked, the Commissioners and their staffs are likely more qualified than this office to evaluate this element.

Nevertheless, given that (b)(6) had a financial interest in securities of intermediaries, several matters on which (b)(6) worked warrant the Commission's heightened scrutiny when it evaluates the "direct and predictable effect" element of 18 U.S.C. § 208. Such matters include the major rulemaking initiatives recently adopted by the CFTC and the legislative work conducted in connection with the CFMA. Specifically, the Commission's evaluation of the "direct and predictable effect" element should include a focus on the following matters on which (b)(6) worked:

- the New Regulatory Framework – Rules Relating to Intermediaries of Commodity Interest Transactions (6/8/00 and 11/21/00);
- other "New Regulatory Framework" proposals (6/8/00, 11/21/00);
- the proposed implementing rules for the CFMA (3/14/01);
- Notice Registration as an FCM or IB for Certain Securities Brokers & Dealers (6/18/01);
- rules implementing the CFMA with respect to transaction execution facilities (7/30/01);
- intermediary rules (8/20/01); and
- legislative work regarding the CFMA and security futures products.²⁹

3. I make no ultimate conclusions concerning whether (b)(6) participated in particular matters in which, "to his knowledge," he or his general partners had a financial interest. 18 U.S.C. § 208.

4. I make no ultimate conclusions concerning whether (b)(6) "knowingly and willfully" made any false, fictitious statements or representations. 5 C.F.R. § 2634.701; 18 U.S.C. § 1001(a).

²⁹ The dates listed are when the Commission took formal action with respect to the matter, as reflected on the "Seriatim Completed" lists.

5. This office has not conducted extensive investigatory activities concerning whether (b)(6) participation in his projects was "personal and substantial" within the meaning of 18 U.S.C. § 208 and I make no conclusions regarding that element. As persons who likely have personal knowledge of the extent of (b)(6) involvement in matters, the Commissioners and their staffs are in a better position to evaluate this element.

6. As explained above, OGE has adopted two pertinent *de minimis* exemptions that apply to an employee's ownership of securities. These two *de minimis* exemptions are potentially relevant to this matter. The pertinent projects on which (b)(6) worked appear to be exclusively "particular matters of general applicability." OGE permits an employee to participate on such matters in which the market value of the employee's disqualifying securities does not exceed \$25,000 in any one such entity and \$50,000 in all affected entities. 5 C.F.R. § 2640.202(b). At no time has (b)(6) owned financial interests in excess of these *de minimis* values.

It is unclear, however, whether the *de minimis* exemptions are applicable to this inquiry. As explained above, the *de minimis* exemptions do not apply to any financial interest that is held or acquired by a CFTC employee in violation of a CFTC supplemental regulation. See 5 C.F.R. § 2640.204 (2002). The Commission has requested the OIG to investigate whether (b)(6) "participated personally and substantially in particular matters in which he knew he had a financial interest, in violation of 18 U.S.C. § 208." Because the Commission has not also specifically requested that the OIG investigate whether (b)(6) holdings would qualify for any *de minimis* exemptions, one interpretation of the Commission's actions is that it believes that (b)(6) holdings were in violation of CFTC Rules but has excused that violation.

On the other hand, the Commission's actions in this matter also can be interpreted as amounting to a finding that (b)(6) holdings were not in violation of CFTC rules. Specifically, a draft recusal memorandum to (b)(6) attached to and circulated with the seriatim concurrence) "proposes to find" that "[c]ompelling countervailing reasons justify your exemption from the restrictions of current Commission regulation 140.735-2(b)(3) pending the Commission's expected adoption of revisions to that regulation that will remove certain restrictions on retention or passive acquisition of otherwise prohibited financial interests where the interest was acquired by . . . gift." (Emphasis added.)³⁰ Furthermore, on February 13, 2002, (b)(6) signed an "ethics agreement," which states that "[t]his agreement is executed in recognition of my interest in a limited partnership which holds investment securities of entities regulated by the Commission, retention of which is permitted under the Commission's conduct regulation, [new CFTC Rule 140.735-2a(d)(2)]." (Emphasis added.) Given these statements, it appears that the Commission has found compelling countervailing reasons to exempt (b)(6) from the CFTC rule governing prohibited holdings and to permit him to retain the interests at issue. See 17 C.F.R. § 140.735-2 (2002); 67 Fed. Reg. 5939 (Feb. 8, 2002) (to be codified at 17

³⁰ It should be noted that the Commission's new "passive acquisition" exemption in new CFTC Rule 140.732-2a(d) is expressly conditioned on making full disclosure of the relevant interest(s) on annual financial disclosure forms and to the General Counsel upon actual or constructive notice that the interest has been acquired. 67 Fed. Reg. at 5941 (to be codified at 17 C.F.R. § 140.735-2a(d)).

C.F.R. § 140.735-1). Such an action appears to be tantamount to a finding that (b)(6) did not violate CFTC rules governing prohibited interests, which would seem to make the OGE *de minimis* exemptions applicable.

7. As explained above, OGE Regulation 2640.202(e) contains two specific exemptions from 18 U.S.C. § 208 concerning the financial interests of an employee's general partner that are imputed to the employee. Read literally, such exemptions would not appear to be applicable to this matter. OGE Rule 2640.202(e)(1) only exempts securities owned by a general partner that are "not related to the partnership." Because the securities owned by (b)(6) general partners were purchased by and were among the holdings of the Limited Partnership, it would appear that such securities are "related" to the partnership. Likewise, the exemption contained in OGE Rule 2640.202(e)(2) only applies to partnerships with "at least 100 partners." The Throop Partners LP has always had no more than ten partners.

Such a literal interpretation, however, could lead to a result that is contrary to OGE's intent. In adopting the general partner interest exemptions in Rule 2640.202(e), OGE stated that such exemptions were "broader" than the exemptions contained in OGE Rule 2640.202(a) and (b) for an employee's interest in securities. 61 Fed. Reg. at 66,835. Should Mr. Parsons' personal financial interests in the disqualifying securities qualify for a *de minimis* exemption under OGE Rule 2640.202(b), interpreting OGE Rule 2640.202(e) not to provide any *de minimis* exemptions for his general partners' interests in the same disqualifying securities would make that a narrower exemption, contrary to OGE's apparent intent.

8. Prosecutions under 18 U.S.C. § 1001 require the Government to demonstrate that an employee made a false or fictitious statement that is "materially false." A statement is "material" under Section 1001 "if it has the natural tendency to influence, or is capable of influencing, the federal agency." *United States v. Logan*, 250 F.3d 350, 361 (6th Cir. 2001); *United States v. Henry*, 164 F.3d 1304, 1308 (10th Cir. 1999).

As explained above, it is unclear whether the Commission believes that (b)(6) financial holdings violated CFTC rules and whether (b)(6) would be exempt from 18 U.S.C. § 208 pursuant to the OGE *de minimis* exemptions. Such factors appear to be relevant to whether (b)(6) incomplete financial disclosures were "materially" false.

TABLE 1

**Value of the Total Ownership Interest of
(b)(6) in the Throop Partners, L.P.¹**

Values as of:	12/31/1998	3/1/1999²	12/31/1999	12/31/2000	12/31/2001
(b)(6) Interest in the Limited Partnership	\$29,700	\$44,913	\$67,809	\$72,757	\$61,694
(b)(6) Distributive Share of Income, as reported on Schedules K-1	\$89	N/A	\$14,983	\$2,049	(\$4,142)
Distributions, as reported on Schedules K-1	0	N/A	\$50	\$4,116	\$5,109

¹ The values in this table are derived from the Schedules K-1 that (b)(6) filed with his 1998, 1999, 2000 and 2001 tax returns as well as account statements that provided to the OIG.

² Figures pertaining to March 1, 1999 are relevant to this inquiry because, as explained below, (b)(6) filed his first financial disclosure statement at the CFTC on March 30, 1999.

TABLE 2

Value of the Ownership Interests of Throop Partners, L.P., General Partner(s) and (b)(6) in Securities of CFTC-Regulated Entities

Values as of:	12/31/1998 ³	12/31/1999 ⁴	12/31/2000 ⁵	12/31/2001	1/31/2002
Throop Partners, L.P.	\$35,901	\$112,666	\$100,997	\$44,658	\$40,701
John S. Throop, Jr.	86.5% share: \$31,054	73% share: \$82,246	N/A	N/A	N/A
(b)(6)	N/A	N/A	4.83% share: \$4,878	4.83% share: \$2,157	4.83% share: \$1,966
(b)(6)	N/A	N/A	4.83% share: \$4,878	4.83% share: \$2,157	4.83% share: \$1,966
(b)(6)	N/A	N/A	4.83% share: \$4,878	4.83% share: \$2,157	4.83% share: \$1,966
(b)(6)	3% share: \$1,077	6% share: \$6,760	7.5% share: \$7,575	7.5% share: \$3,349	7.5% share: \$3,053

³ On January 3, 1999, Mr. Throop's percentage share in the Limited Partnership dropped to 73% and (b)(6) percentage share increased to 6%.

⁴ On January 3, 2000, Mr. Throop's percentage share in the Limited Partnership dropped to 59.5% and (b)(6) percentage share increased to 7.5%.

⁵ On April 8, 2000, Mr. Throop assigned his 1% general partnership interest in equal one-third shares, to his three daughters. Mr. Throop died in August 2000. (b)(6) informed the OIG that, when Mr. Throop's estate is settled, she, (b)(6) and (b)(6) will each inherit one-third of their father's 58.5% share in the Limited Partnership. This memorandum assumes that, until Mr. Throop's estate is settled, (b)(6)s, (b)(6)s and (b)(6)s financial interests do not include any interest that they will inherit.

TABLE 3

**Matters on Which (b)(6) Participated
That Focused on the Futures Industry
December 31, 1998 – January 19, 2001**

Date	Subject
1/7/99	New York Mercantile Exchange proposal to permit the Exchange of Futures for, or in connection with Swap Agreements (99-056)
1/25/99	10/21/98 & 1/20/99 Submission of the CBT relating to its Wheat, Oats, Corn and Soybean Futures Contracts (99-66)
1/28/99	Changes in Reporting Levels for Large Traders (99-65)
2/3/99	Proposal to vacate the designation of the aluminum futures contract of the COMEX Division of the New York Mercantile Exchange (99-75)
2/25/99	Testimony of Brooksley Born regarding Long-Term Capital Management and OTC derivatives and hedge funds on March 3, 1999 (99-89)
3/16/99	Proposed Rules Concerning Automated Trading System Use in the United States (99-103)
3/22/99	Applications of the Chicago Mercantile Exchange for designations as a contract market in Cash-Settled Butter futures and futures options contracts (99-10)
3/23/99	Chicago Board of Trade's U.S. Treasury Bond, Long-Term T-Note, Medium-Term T-Note, Short Term T-Note and MidAmerica Commodity Exchange's U.S. Treasury Bond, Long-Term T-Note, Medium-Term T-Note futures contracts
3/24/99	Kansas City Board of Trade application for designation as a contract market in the Internet Stock Price Index futures and futures options contracts (99-113)
4/2/99	Fees for Applications for Contract Markets Designations, Audits of Leverage Transactions Merchants, and Reviews of the Rule Enforcement Programs of Contract markets and Registered Futures Associations (99-117)
4/15/99	Fees for Applications for Contract Markets Designations, Audits of Leverage Transactions Merchants, and Reviews of the Rule Enforcement Programs of Contract markets and Registered Futures Associations (99-127)
4/15/99	Fees for applications for contract market designation
4/22/99	Proposed rules concerning access to Automated Boards of Trade
4/27/99	Revision of Speculative Position Limits and Associated Rules
5/3/99	Testimony of David D. Spears, Commissioner, concerning Agricultural Trade Options before the Senate Committee on Agriculture, Nutrition and Forestry, May 5, 1999
5/5/99	Chicago Mercantile Exchange Eurodollar Forward Rate Agreement Futures and Option Contracts (99-146)
5/13/99	Chicago Mercantile Exchange applications for designation as a contract market in E-Mini Nasdaq 100 Index futures contract and options on the E-Mini Nasdaq 100 Index futures contract (99-155)
5/25/99	Revisions to the Commission's Guideline on Economic and Public Interest Requirements for Contract Market Designation ("Guideline No. 1") (99-124)
6/2/99	Order of the Commission to lift the moratorium on Foreign Terminals, effective immediately
6/4/99	Advisory on Alternative Execution, or Block Trading, Procedures for the Futures Industry
6/4/99	Amendment of order granting statutory dual trading exemption for the Project A T-Bond futures contract at the Chicago Board of Trade to include the Ten-Year T-Note futures contract
6/11/99	Withdrawal of the Proposed Rules Concerning Automated Trading System Use in the United States (99-180)
6/15/99	Chicago Board of Trade – soybean oil futures contract (99-174)
7/20/99	Revised procedures for Commission review and approval of applications for contract market designation and of related contract terms and conditions (99-211)

7/23/99	CME applications for designation as a contract market in the Three-Month Eurodollar FRA futures contract and options on that futures contract (99-205)
8/4/99	Testimony of the Commodity Futures Trading Commission on August 5, 1999 (by David D. Spears, Acting Chairman)
8/12/99	Chicago Mercantile Exchange Applications for Designation as a contract market in Degree Days Futures Contracts for 10 Specified Cities and Options on those futures contracts (99-224)
8/25/99	Proposed Amendments to the Commission's Interim Rules Permitting Trade Options on the Enumerated Agricultural Commodities (99-233)
9/13/99	Application of the New York Mercantile Exchange as a contract market in crude oil average price options, heating oil average price options and unleaded gasoline average price options
10/14/99	COMEX Division of the New York Mercantile Exchange Application for Designation as a Contract Market in the FTSE Eurotop 300 Stock Index Futures and Futures Option Contracts (00-005)
10/27/99	Chicago Board of Trade Applications for Designation as a Contract Market in the Dow Jones Transportation Average Index and Dow Jones Utility Average Index Futures and Futures Option Contracts (00-12)
11/17/99	Withdrawal of Concept Release Concerning Over-the-Counter Derivatives (99-21)
11/29/99	Final Amendments to the Commission's Interim Rules Permitting Trade Options on the Agricultural Commodities (99-22)
2/11/00	Cantor Financial Futures Exchange, Inc., Proposed New Rules 4-A, 25 and 305-A and proposed amendments to Rules 32, 300, 302, and 306 -- Block Trading Proposal (00-67)
3/8/00	Changes in Reporting Levels for Large Traders (00-95)
3/13/00	Application of FutureCom Ltd. for designation as a contract market in cash-settled live cattle futures and options contracts (00-104)
3/27/00	Written Statements of Chairman William J. Rainer before the House and Senate Appropriates Subcommittees on the FY 2001 Budget Request (00-120)
4/18/00	Final Amendment to Rule 4.5 -- Exclusion of Church Plans from being Pools (00-133)
5/4/00	Testimony of William J. Rainer, Chairman, Commodity Futures Trading Commission, before the Senate Banking Committee, Chicago, Illinois, on May 8, 2000
5/11/00	Chicago Mercantile Exchange Nasdaq 100 and E-Mini Nasdaq 100 futures contracts and the Kansas City Board of Trade Internet Stock Price Index futures contracts (00-151)
5/19/00	The Chicago Mercantile Exchange's Proposed New Rule 526 -- Block Transactions (00-162)
5/31/00	Chicago Mercantile Exchange applications for designation as a contract market in the Fortune e-50 index futures contract and options on the Fortune e-50 index futures contract (00-164)
6/8/00	New Regulatory Framework -- Rules Relating to Intermediaries of Commodity Interest Transactions (00-173)
6/8/00	New Regulatory Framework -- A New Framework for Clearing Organizations (00-172)
6/8/00	New Regulatory Framework -- A New Regulatory Framework for Multilateral Transaction Execution Facilities, Intermediaries and Clearing Organizations (00-171)
6/8/00	New Regulatory Framework -- Exemption for Bilateral Transactions (00-170)
6/13/00	Testimony of C. Robert Paul on June 14, 2000
6/21/00	Testimony of William J. Rainer, Chairman, on June 21, 2000
6/26/00	Letter to Chairman Larry Combest and Ranking member Charlie Stenholm regarding CFTC's views on H.R. 4541 (00-192)
6/30/00	A Statement of Policy regarding the listing by foreign exchanges of contracts through U.S.-Located Trading Devices
7/10/00	Application of the Merchants' Exchange of St Louis for Designation as a Contract Market in the Illinois Waterway and the St Louis Harbor Barge Freight Futures Contracts (00-196)
7/11/00	Testimony of C. Robert Paul, General Counsel, before the U.S. House of Representatives Committee on Commerce, Subcommittee on Finance and Hazardous Materials on July 12, 2000

7/18/00	Written testimony of C. Robert Paul, General Counsel, before the U.S. House of Representatives, Committee on Banking and Financial Services, July 19, 2000
7/19/00	CBOT Applications for Designation as a Contract market in the Dow Jones Composite Average Index Futures & Futures Options Contracts (00-202)
7/27/00	Direct Foreign Order Transmittal by U.S. Persons (00-208)
8/10/00	Approval of Speculative limit rules for futures and option contracts filed under the certification procedures of Rule 5.3 (00-216)
8/29/00	Treatment of Foreign Futures and Foreign Options Customer Funds (00-229)
9/5/00	Letters to Congressman Dingell, Towns and Markey
9/19/00	Letter to the Honorable Carolyn B. Maloney from Chairman William J. Rainer (00-257)
11/21/00	CFTC's New Regulatory Framework for Bilateral Transactions – Final Rules (01-027)
11/21/00	CFTC's New Regulatory Framework for Clearing Organizations – Final Rules (01-026)
11/21/00	CFTC's New Regulatory Framework for Intermediaries – Final Rules (01-025)
11/21/00	CFTC's New Regulatory Framework for Multilateral Transaction Execution Facilities (01-024)
12/7/00	Exemption from Agricultural Trade Option Rule (01-033)
12/19/00	Partial Withdrawal of the Final Rules Promulgating a New Regulatory Framework to Apply to Multilateral Transaction Execution Facilities, to Market Intermediaries and to Clearing Organizations (01-039)
12/22/00	OnExchange Board of Trade (ONXBOT) Application for Designation as a Contract Market and for Approval of its Five-Year U.S. Treasury Note Futures Contract (01-045)

TABLE 4

**Matters on Which (b)(6) Participated
That Focused on the Futures Industry
January 19, 2001 – January 17, 2002**

Date	Subject
3/2/01	Letter to the Honorable John D. Dingell, Ranking member, Committee on Energy and Commerce and The Honorable Henry A. Waxman, Ranking member, Committee on Government Reform from Acting Chairman Newsome (01-071)
3/2/01	Proposed Implementing Rules for the Commodity Futures Modernization Act of 2000
3/14/01	Testimony of Acting Chairman Newsome on March 21, 2001 (01-079)
5/4/01	Proposed Rules Regarding the Method for Determining Market Capitalization and Dollar Value of Average Daily Trading Volume; the Application of the Definition of Narrow-Based Security Index
5/9/01	Letter to Congressman Michael G. Oxley, Chairman, House Committee commenting on H.R. 1408: Financial Services Antifraud Network Act of 2001
5/10/01	REVISED Proposed Rules Regarding the Method for Determining Market Capitalization and Dollar Value of Average Daily Trading Volume; the Application of Narrow-Based Security Index
5/22/01	Proposed Amendments to the New York Cotton Exchange Cotton No. 2 futures contract (01-121)
6/5/01	Written testimony of Acting Chairman Newsome before the U.S. Senate Committee on Appropriations, Subcommittee on Agriculture, Rural Development, and Related Agencies
6/18/01	Notice Registration as an FCM or IB for Certain Securities Brokers & Dealers – Extension of the Comment Period
6/26/01	Extension of comment period of Joint CFTC-SEC Rulemaking
7/9/01	Application of EnergyClear Corporation for Registration as a Derivatives Clearing Organization pursuant to Section 5b of the CEA (01-158)
7/30/01	Rules implementing the Commodity Futures Modernization Act with respect to transaction execution facilities
8/20/01	Final Joint Rules Regarding the Method for Determining Market Capitalization and Dollar Value of Average Daily Trading Volume the Application of the Definition of Narrow-Based Security Index (01-187)
8/20/01	Joint Order Granting the Modification of Listing Standards Requirements (01-188)
8/20/01	Final Rulemaking Regarding Designated Contract markets in Security Futures Products (01-186)
8/20/01	Intermediary Rules
8/21/01	Application of Nasdaq LIFFE, LLC Futures Exchange for designation as a contract market pursuant to Section 5 of the CEA (01-190)
8/22/01	Letter to the Honorable Tom Harkin and The Honorable Larry Combest from Acting Chairman Newsome (01-192)
9/19/01	Regulatory relief for intermediaries as a result of the events of September 11, 2001 (01-207)
9/25/01	Margin Rules for Security Futures (01-209) (SEC and CFTC Joint Proposed Rule)
9/26/01	Margin Rules for Security Futures – REVISED VERSION 9/26/01
10/29/01	Application of London Clearing House for registration as a derivatives clearing organization pursuant to Section 5b of the CEA
11/30/01	The CME's Adoption of a \$25 Delivery Fee Applicable to Deliveries on Agricultural Futures Contracts
12/20/01	Joint Report on Retail Swaps (-48)

December 20, 2001

TO: File

FROM: [REDACTED]

SUBJECT: Investigation of Anonymous Complaint regarding [REDACTED]

In response to an anonymous telephonic complaint alleging that [REDACTED] was practicing law outside of CFTC during business hours by representing [REDACTED] in Alexandria in a zoning matter, the Inspector General opened an investigation.

During the interview process, [REDACTED] stated that [REDACTED] was helping friends (the [REDACTED] of [REDACTED] in a dispute with the friends' next-door neighbors [REDACTED]. The dispute concerned the [REDACTED] desire to extend their home and attach it to the wall of the [REDACTED] home. The decision-making power in the matter resided in the Alexandria Board of Architectural Review and an attempt at settlement of the dispute was being handled by the Alexandria City Attorney, [REDACTED]. The [REDACTED] were represented by [REDACTED] an attorney.

[REDACTED] stated that [REDACTED] informed the [REDACTED] at the beginning of this process that [REDACTED] could not represent them in any way because [REDACTED] was not licensed to practice in Virginia. [REDACTED] could, however, advise them as a friend. [REDACTED] stated that at the beginning of every meeting with parties or other participants in the attempts at settlement [REDACTED] was very careful to state that [REDACTED] was not representing the [REDACTED] but was merely advising them as a friend.

We also interviewed [REDACTED] and [REDACTED] to determine if [REDACTED] had stated clearly to all participants that she was not representing the [REDACTED] as an attorney but was merely advising them as a friend. We also asked if [REDACTED] subsequent actions were in accordance with her declaration. The unanimous response was that [REDACTED] had made the declaration that [REDACTED] was not representing the [REDACTED] and that [REDACTED] subsequent actions were in accordance with that declaration.

Accordingly, this investigation was closed.

Report

Case Closed



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5110
Facsimile: (202) 418-5522

August 9, 2001

OFFICE OF INSPECTOR GENERAL

TO: The Commission

FROM: A. Roy Lavik *ARL*
Inspector General

SUBJECT: Report of Investigation of Potential Conflict of Interest re: [REDACTED]

A June 26, 2001 memorandum from [REDACTED], Assistant General Counsel and [REDACTED], transmitted a request from the Commission that the Inspector General conduct an investigation to assure that [REDACTED] had not, during his employment, violated federal conflict of interest law and regulations. In response to that request, the Inspector General conducted an investigation. The objective of the investigation was as follows:

To determine whether [REDACTED], from his date of employment (October 25, 1998) with the Commission to the date of his recusal participated personally and substantially, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a judicial or other proceeding, application, request for a ruling or other determination, or other particular matter in which, to his knowledge, he, through his spouse, had a financial interest and in which the particular matter would have had a direct and predictable effect on that interest. See 18 U.S.C. 208; 5 CFR 2635.401 et seq. and 2640.103.

By reviewing the holdings of the trust in which [REDACTED]'s wife's has or had an interest during [REDACTED]'s tenure with the Commission, the Office of the Inspector General (OIG) constructed a listing of all financial-related holdings in the trust during [REDACTED]'s tenure. By examining National Futures Association records for the pertinent time periods, the OIG produced a listing of all registered firms which were associated with the trust's financial-related holdings.

Using the official records systems of the Division of Enforcement supplemented by interviews with [REDACTED]'s supervisors and coworkers, the OIG developed a listing of matters and related business entities on which [REDACTED] worked from October 1998 until his move to the [REDACTED]'s office. The OIG determined that, during his tenure in Enforcement, Mr. [REDACTED] worked on no matters which concerned any entity related to the holdings of the trust in which [REDACTED]'s wife has or had an interest. The OIG also determined that during this time, [REDACTED] did not personally and substantially participate in any matters of general applicability to the futures industry which would have had a direct and predictable effect on the trust's interests.

With the assistance of the Division of Enforcement and the Office of the Acting Chairman, the Inspector General developed listings of matters which had been forwarded by the Division of Enforcement to the Acting Chairman's office from January 2001 onward. By interviews of the Acting Chairman and his staff, the OIG determined what Enforcement matters were assigned to [REDACTED] and the nature of his assignments. By comparing the listing of the registered firms which were associated with the trust's financial-related holdings with the listings of matters which had been assigned to [REDACTED], the OIG determined that, during his tenure in the Office of the Acting Chairman, [REDACTED] worked on no matters which concerned any entity related to the holdings of the trust in which [REDACTED]'s wife has or had an interest. The OIG also determined that during this time, [REDACTED] did not personally and substantially participate in any matters of general applicability to the futures industry which would have had a direct and predictable effect on the trust's interests.

Accordingly, this investigation is closed.



COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington DC 20581

(202) 254 - 3154

(202) 254 - 3358 Facsimile

March 14, 1995

OFFICE OF
THE INSPECTOR GENERAL

I-95-03

TO: File

FROM: A. Roy Lavik *ARL*
Inspector General

SUBJECT: Reports of Improper Detail to the White House

In a March 3, 1995 conversation with Chairman Schapiro, the Chairman expressed concern with the detail of [REDACTED] to the White House during the Summer of 1993. As the Chairman put it, she hoped that "all of the i's had been dotted, and all of the t's crossed."

This Office contacted [REDACTED] of the Office of Proceedings, who was [REDACTED] supervisor at the time of the detail, and [REDACTED], [REDACTED] of Personnel. Conversations with both officials and subsequent records searches by them uncovered a June 18, 1993 letter from [REDACTED] Deputy Administrative Manager, Presidential Personnel, The White House, requesting the detail of [REDACTED] to the White House Office of Presidential Personnel for a period of three months in the Boards and Commissions department. This letter was annotated, "OK William P. Albrecht" in what appears to be the hand of Commissioner, then Acting Chairman, Albrecht. An additional note reads, "effective 7-1-93 [REDACTED]" According to both [REDACTED] and [REDACTED], this letter and the accompanying notations are the only documentation of this detail.

[REDACTED] provided this Office with the time and attendance records of [REDACTED] for calendar years 1992 and 1993. [REDACTED] recollection of the detail was that it lasted for the requested three months (from July 1, 1993 until September 30, 1993) and that at the end of the three months, [REDACTED] asked for and received permission to take his annual leave so that he could work at the White House. The time and attendance reports filled out for [REDACTED] while he was detailed to the White House are indistinguishable from those filled out before his detail because the same accounting codes were used for his time during both periods. The bulk of his time is coded as either "205102 - Voluntary Decisional Proceedings" or "205103 - Summary Decisional Proceedings." On October 1, 1993, [REDACTED] took 8 hours of annual leave. During the following pay period (Pay Period 20), [REDACTED] took 27 hours of annual leave. During Pay Period 21, he took 34 hours of annual leave. Pay period 22 - 17 hours. Pay Period 23 -- 18 hours. Pay Period 24 -- 25

hours. Pay Period 25 -- 13 hours. Pay Period 26 -- 0 hours.
This pattern is consistent with the reported memory of [REDACTED].

[REDACTED], in a Friday, March 10, 1995 meeting, stated that the Federal Personnel Manual (FPM), Subchapter 8, Detail of Employees, dated May 15, 1990 contained the controlling rules. In section 8-7. Documentation of Details, b. Interagency Details, the FPM states, "Agencies should document interagency details in the employee's Official Personnel Folder by filing a copy of the agreement with the borrowing agency or a completed SF 52." Since the FPM uses the word, "should" instead of, "must", this Office believes that no documentation is required. The Office also believes that the annotated letter is sufficient documentation of the request for and the approval of the detail.

Since there appears to be no violation of either law or regulation in this matter, this case is closed.

Attachment

Post-It™ brand fax transmittal memo 7671		# of pages	1
To	[REDACTED]	From	Wm F. Albrecht
Co	Presidential Personnel	Co.	CFTC
Dept.		Pho	[REDACTED]
Fax #	[REDACTED]	Fa	[REDACTED]

THE WH

WAS:

June 18, 1993

Mr. William Albrecht
Commodity Futures Trading Commission
Washington, DC

Dear Mr. Albrecht:

We request [REDACTED] be detailed to the White House Office of Presidential Personnel, for a period of 3 months in the Boards and Commissions department.

We understand that should this detail extend beyond 180 it will be reimbursable. (See 3 U.S.C.112)

Thank you for your support in helping us obtain the proper staff to handle the demands for appointments by the new administration.

Sincerely,

[REDACTED]

Deputy Administrative Manager, Presidential Personnel

OK

[REDACTED]

effective 7-1-93

[REDACTED]



COMMODITY FUTURES TRADING COMMISSION

2033 K Street, NW, Washington DC 20581

(202) 254-3154

(202) 254-3358 Facsimile

August 12, 1994

OFFICE OF
THE INSPECTOR GENERAL

TO: Barbara Pedersen Holum
Acting Chairman

FROM: A. Roy Lavik
Inspector General

SUBJECT: Allegation of Breach of Settlement Agreement

In a June 24, 1994 memorandum addressed to the Chairman, the Inspector General and the Designated Ethics Official, [REDACTED] and [REDACTED] of the firm of Winston and Strawn [REDACTED] representing Kemper Financial Services, Inc. ("Kemper") charged that the Commodity Futures Trading Commission (CFTC), by permitting the publication of an article by one of its employees which incorrectly characterized an October 1993 settlement agreement, had breached the settlement agreement. They alleged that the article falsely represents that Kemper agreed to a settlement involving a fraudulent allocation scheme, when, in fact, the settlement did not involve fraud charges.

[REDACTED] and [REDACTED] specific reference was to an article entitled, "Using Finance Theory to Measure Damages in Cases Involving Fraudulent Trade Allocation Schemes" by [REDACTED], [REDACTED], and [REDACTED] which appeared in the February 1994 issue of The Business Lawyer. The article identified the authors as employees of the CFTC and Securities and Exchange Commission (SEC), but did not contain any disclaimer indicating that the article represented the opinions of the authors and not necessarily those of the CFTC or the SEC. [REDACTED] is an employee of the CFTC in the Research Section of the Division of Economic Analysis. The other two authors are employees of the SEC.

[REDACTED] asked that CFTC: 1) immediately contact the editor of The Business Lawyer and arrange for a retraction satisfactory to Kemper; 2) initiate an investigation into the circumstances surrounding the preparation and review of this article; 3) review whether CFTC procedures were violated in the review and oversight of the preparation and approval of the printing of this article; 4) review staff procedures on supervision of staff-authors in preparation of this article which misrepresents the CFTC's settlement agreement; 5) review other external communications made by the staff to the press and in speeches at conferences or seminars; and 6) determine what disciplinary measures are appropriate for their authors and their supervisors.

In a July 12, 1994 letter addressed to the Director, Division of Enforcement, [REDACTED] of the firm Cotsirilos, Stephenson, Tighe and Streicker, Ltd. representing [REDACTED], an employee of Kemper alleged to have allocated trades, charged that the CFTC, through the article coauthored by [REDACTED], had disclosed confidential information regarding [REDACTED] obtained during the course of the CFTC investigation. [REDACTED] asked that CFTC take the following measures: 1) An inquiry be conducted immediately to determine the circumstances surrounding these statements and whether any rules, regulations, or statutes were violated including agency and professional Codes of Conduct; 2) All individuals involved in this investigation be admonished about making further comments; 3) A determination be made as to which agency personnel knew or had reason to know that the statements were to be made and who reviewed or authorized the statements; 4) [REDACTED] be removed from any further participation in this matter and be disciplined; 5) Any agency personnel who knew or had reason to know that the statements were to be made or who reviewed or authorized the statements be appropriately disciplined; 6) A retraction satisfactory to [REDACTED] be published in The Business Lawyer immediately.

In response to these letters, the Office of the Inspector General (OIG) undertook an investigation.

BACKGROUND

On October 20, 1993, the Commission, filed an administrative complaint against Kemper.^{1/} Kemper submitted an Offer of Settlement ("Offer"), and upon consideration, the Commission determined to accept the Offer.^{2/} Solely on the basis of the consent evidenced by the Offer, and without any adjudication on the merits, the Commission found that Kemper violated Regulation 166.3, 17 C.F.R. § 166.3 (1993).

Accordingly, the Commission ordered that:

- "1. Kemper shall cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (1993);

^{1/} The Complaint alleged that Kemper violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (1993) by failing to supervise diligently the handling of commodity interest accounts by its employees and agents.

^{2/} In its Offer, without admitting or denying the allegations of the Complaint, Kemper stipulated that the record basis on which the Opinion and Order ("Order") were entered consists of the Complaint and the findings consented to in the Offer, which are incorporated in the Order.

2. Kemper shall pay a civil monetary penalty in the amount of Three Hundred Thousand Dollars (\$300,000). Such penalty shall be paid, in total, by Kemper within five (5) days of the date of this Order and, pursuant to Section 6(g) (2) of the Act, if Kemper fails to pay the full amount of this penalty within fifteen (15) days of the due date, it shall be automatically prohibited from trading on all contract markets until it shows to the satisfaction of the Commission that payment of the penalty with interest thereon to date of payment has been made;

3. Kemper shall comply with its undertakings:

A. To pay \$9.2 million (the "settlement funds") within ten business days of the date of this Order into an interest-bearing escrow account, which has been approved by Commission and SEC staff, for the benefit of the shareholders of the Kemper Option Income Fund and the Kemper Investment Portfolios Inc. - Options Portfolio ("mutual funds") between January 1, 1987 and December 31, 1987 ("Claimants"). The settlement funds shall be distributed to Claimants as provided below..."

The instant article by [REDACTED], [REDACTED], and [REDACTED] in the February 1994 issue of The Business Lawyer did mischaracterize the Kemper settlement by using the phrase, "fraudulent scheme" in the article when referring to the Kemper settlement. At other places in the article, the authors refer to, "fraudulent trade allocation schemes" and "disgorgement in cases of fraudulent allocation" when referring to Kemper. The settlement agreements did not use the words, "fraudulent" or "disgorgement".

Of comfort to the CFTC, most, if not all, article references are to the SEC settlement with Kemper not the latter's agreement with CFTC.

FINDINGS

[REDACTED] admits to having written the subject article in concert with the two named SEC employees. [REDACTED] says that he received no compensation for that article.

The Commission has no formal process for reviewing articles written by Commission employees.^{3/} Rather an informal process

^{3/} The Commission has established in 5 C.F.R. Section 5101.103 procedures for approval of outside employment. Although this procedure insures that the employee's supervisors and the
(continued...)

has developed in the Research Section of the Division of Economic Analysis to inform [REDACTED], Deputy Director of the Research Section, of the substance of any articles being written by employees. If the article is being written in whole or in part on CFTC time or on CFTC equipment, [REDACTED] will determine if the article is reasonably related to the work of CFTC and if it will interfere with the employees other, higher priority duties. [REDACTED] is also concerned with preventing the release of Section 8(a) material. If the article meets these criteria, [REDACTED] will allow the employee to work on the article on CFTC time and equipment. It has been [REDACTED] consistent practice to inform employees that they must include with any published articles identifying them as CFTC employees a disclaimer stating that the opinions expressed were their own and not necessarily those of the Commission.

When [REDACTED] approached [REDACTED], they discussed his proposed article, and [REDACTED] approved of [REDACTED] participation with the two SEC employees in the writing of the article. [REDACTED] completed his portion of the article partly on CFTC time and partly on his own time.

When the article was in final form, [REDACTED] brought the article to [REDACTED] and asked for his advice on clearance procedures in CFTC. [REDACTED] informed him that while there were no formal procedures, he would suggest that the article be presented to [REDACTED], the Counsel of the Division of Economic Analysis, and to the Division of Enforcement, for review and comment.

When [REDACTED] approached [REDACTED] and asked that he review the article, [REDACTED] asked him if the article would have a disclaimer published with it. When informed by [REDACTED] that such a disclaimer would be attached, [REDACTED] indicated that that was the limit of his interest. [REDACTED] did not further review the article, but he suggested that [REDACTED] clear his article with Enforcement.

[REDACTED] first approached [REDACTED], Deputy Director, Division of Enforcement, who referred him to [REDACTED] who had handled the case. When [REDACTED] approached [REDACTED] and asked that he review the article, [REDACTED] asked for an

^{3/} (...continued)

Executive Director are aware of the employee's activities, no attempt is made to review articles written by the employee. The Code of Conduct issued by the Office of Government Ethics requires employees to include a disclaimer, "satisfactory to the agency stating that the views expressed in the article do not necessarily represent the views of the agency or the United States." 5 C.F.R. Section 2635.807(b)(2).

oral briefing from [REDACTED] on the method [REDACTED] was proposing for calculating the amount of disgorgement in fraudulent allocation schemes.^{4/} [REDACTED] principal concern was that [REDACTED]'s calculation might yield a smaller amount than current methods and thus face [REDACTED], in court, with a competing, lesser amount. [REDACTED] assured [REDACTED] that his methodology would usually produce a higher amount and that, in any event, his article proposed using the higher of the two calculations. [REDACTED] was satisfied by that answer. [REDACTED] was also comforted by the fact that the SEC had a formal review procedure and that the review procedure was being applied to this article. [REDACTED] has no recollection of having read the article, but he does remember seeing a disclaimer on the title page of the article.

[REDACTED], concerned that he was following the proper procedure, contacted [REDACTED] the Designated Agency Ethics Official, and asked him if there was any formal procedure to follow in these matters. [REDACTED] informed [REDACTED] that there was no formal approval process, but that any employee contemplating outside employment was required to file a Request for Approval of Outside Employment with the employee's supervisor so that the supervisor and the Executive Director would be aware of the employee's activities. Thus assured, [REDACTED] took no further action.

No one in the process of review focussed on the portion of the article which characterized the SEC/CFTC settlement with Kemper.

[REDACTED] began work on the article in May 1993, while his coauthors had begun work on the article earlier. The article was submitted for publication in November 1993. [REDACTED] states that he drew all of the information he contributed to the article from public sources. We have found no information to contradict this statement. [REDACTED]'s name was added to the Order of Investigation on March 7, 1994. According to [REDACTED], [REDACTED]'s name was added to allow Enforcement to utilize [REDACTED]'s expertise during the depositions of [REDACTED] in assessing Respondent's calculation of the impact of the trading behavior under review.

In late December 1993 or January 1994, [REDACTED] presented the paper to a workshop for the Division of Economic Analysis staff. This was a technical discussion with slides. The disclaimer was on the article given to the attendees at the presentation.

^{4/} This issue was the principal subject of the article.

The investigation did not disclose any other external communications by the staff concerning the Kemper settlement to the press or in speeches at conferences or seminars.^{5/}

When the article was published in the February issue of The Business Lawyer, the disclaimer was not attached. [REDACTED], faculty editor of The Business Lawyer accepts full responsibility for not including the disclaimer. The disclaimer was included when submitted but was lost in the editing process. The disclaimer was printed in the following issue of The Business Lawyer.

Discussions with the Acting Executive Director and the Acting General Counsel, both long time employees of the Commission, disclosed no other instances in the nineteen year history of the Commission when an employee article led to a similar situation.

CONCLUSIONS

The Commission has no procedures covering the review and oversight of articles published by CFTC employees. The only requirement everyone appears to agree with is that a disclaimer should be included to the effect that the views expressed are solely those of the authors and not of the Commission or its staff. This requirement is an informal one not codified in regulation or internal instruction.

[REDACTED] made every reasonable effort to insure that the article which he coauthored was presented to his supervisor, his Division's Counsel and the Division of Enforcement Deputy Director responsible for the Kemper matter for review. He expected these reviews to uncover any material which might create potential problems for CFTC. [REDACTED] included with his article the disclaimer which he was informed was the only requirement for protecting the Commission.

[REDACTED]'s immediate supervisor, properly advised [REDACTED] when [REDACTED] recognized that the material should be reviewed by Division Counsel and by the Division of Enforcement.

[REDACTED], Counsel to the Division of Economic Analysis, believes that the disclaimer is sufficient protection for the Commission, and he limited his review to the presence of the disclaimer.

^{5/} Conversely, an SEC official allegedly incorrectly characterized the settlement at a public conference.

██████████, Deputy Director of the Division of Enforcement, clearly misunderstood the nature of the review being requested. Rather than review the article for material which might cause problems for CFTC or for the accuracy of the description of the Kemper settlement, he orally reviewed with ██████████ the potential impact of the calculation methodology on CFTC court cases. To his credit, ██████████ did consult with the Designated Agency Ethics Official to insure that he was properly handling the matter.

██████████ the Designated Agency Ethics Official, clearly misunderstood what ██████████ was asking about and informed him that there was no formal approval process, but that any employee contemplating outside employment was required to file a Request for Approval of Outside Employment with the employee's supervisor so that the supervisor and the Executive Director would be aware of the employee's activities.

Given that a matter of this kind has come up only once so far in the history of the Commission, establishing an intensive formal process for reviewing every article produced by any CFTC employee similar to that employed by the SEC would appear to be an overreaction. It is interesting to note that the SEC's formalized process failed to properly deal with this article. However, doing nothing and allowing the agency to rely strictly on a disclaimer appears to be insufficient protection for the Commission.

RECOMMENDATION

The CFTC continues to believe that its staff has the right to express its own views as long as they don't represent them as the views of the Commission. Indeed, the Commission encourages its employees to publish materials which inform the public of issues of interest to the Commission and keeps the Commission on the cutting edge of futures related thought.

The Office of the Inspector General recommends that the Chairman send a memorandum to all CFTC employees confirming the Commission's support of employee publication. The memorandum should require that an employee's article characterizing Commission actions be submitted for review. The memorandum should also encourage supervisors to review articles presented to them by employees for review, not for the substance of the theory or proposition being advanced by the article or consistency with agency policy, but for the accuracy of representations of Commission actions, avoidance of confidential disclosures, and the presence of an appropriate disclaimer. Such focus should prevent reoccurrences similar to Kemper.