McDermott Will & Emery

On the Subject

Energy & Commodities Advisory

January 26, 2010

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FERC Finds Market Manipulation by Futures Trader

On January 22, 2010, a Federal Energy Regulatory Commission (FERC) administrative law judge ruled that Brian Hunter, a former natural gas trader at Amaranth Advisors LLC, violated the commission's Anti-Manipulation Rule. This case marks the first time that FERC has found market manipulation by a futures trader. Judge Carmen Cintron found that "Hunter intentionally manipulated the settlement price of the at-issue natural gas futures contracts. His trading was specifically designed to lower the NYMEX price in order to benefit his swap positions on other exchanges." This initial decision is now subject to review by the full commission.

The judge specifically found that Hunter's conduct violated FERC's Anti-Manipulation Rule, which prohibits (1) fraudulent or deceptive behavior, (2) with the requisite scienter, (3) in connection with the purchase or sale of jurisdictional natural gas or electric energy.

Fraudulent or Deceptive Behavior

The judge found that Hunter's trading of a significant volume of natural gas futures contracts during the final settlement periods in March, April and May 2006 constituted fraudulent behavior. By "aggressively" selling through hitting bids and executing at prices generally below those of other traders during the last half hour of trading in these three months, Hunter was able to lower the price of the prompt month contract. This lower price benefited Hunter's larger short swap positions in other trading platforms.

Scienter

The judge concluded by a preponderance of the evidence that Hunter intended to manipulate prices during this period. According to the judge, Hunter knew that the natural gas futures market could be manipulated and that his positions in other exchanges would benefit from a lower New York Mercantile Exchange (NYMEX) settlement price. The judge found that Hunter's explanations for his activities during these months were not credible. For example, the judge concluded that even though a position comprises spreads, that does not preclude a trader from profiting on the expiration of the prompt month leg.

In Connection with the Purchase of Jurisdictional Natural Gas

The judge found that Hunter's conduct was done in connection with natural gas transactions. Since NYMEX futures settlement prices have a significant impact on physical natural gas prices, the judge ruled that Hunter acted recklessly with regard to the effect of his trades on jurisdictional transactions.

The judge's decision comes in the wake of a lengthy FERC investigation of Hunter and his former employer, Amaranth. Hunter was the lead energy trader with the hedge fund. In 2007, FERC accused Amaranth of violating its anti-manipulation regulations for natural gas futures trades conducted in March, April and May 2006 on the NYMEX. Amaranth and trader Matthew Donohoe settled with FERC and the Commodity Futures Trading Commission (CFTC) for $7.5 million in August 2009, but Hunter did not participate in the settlement. Amaranth collapsed in September 2006 after losing approximately $6 billion from natural gas trades. For more information on this proceeding, see McDermott's August 12, 2009, *On the Subject* "Amaranth Settles with FERC and CFTC for Total Settlement of $7.5 Million Civil Penalty."

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