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Commodities Exchange Act Claim Dismissed for Failing to Plead Scienter

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The U.S. Court of Appeals for the Fifth Circuit affirmed a district court's dismissal of a putative class action brought by a group of natural gas futures and options contract traders under the Commodities Exchange Act (CEA).

Plaintiffs alleged that defendants manipulated the natural gas futures and options prices in violation of the CEA by selling large quantities of natural gas for delivery at one delivery hub, the Houston Ship Channel, in order to depress the price of the natural gas at that hub to an artificial level. The defendants allegedly intended to profit from the difference in price at that hub and the Henry Hub, the hub where delivery was to be made for all natural gas contracts on the New York Mercantile Exchange (NYMEX). Plaintiffs further alleged that the defendants' price manipulation caused the NYMEX price to decrease, resulting in a loss to plaintiffs, who traded futures and options on NYMEX.

Defendants moved to dismiss plaintiff's securities fraud claim before the district court. In granting the motion to dismiss, the district court reasoned that plaintiffs failed to allege that defendants specifically intended to manipulate the price of natural gas at Henry Hub, as required for a private right of action under the CEA. The plaintiffs argued that they had sufficiently alleged a CEA claim by alleging that the defendants intended to manipulate the price of the underlying commodity, natural gas, knowing that their manipulation would result in a decrease in the price at the Henry Hub and thereby affect the commodity contracts traded on NYMEX. In affirming the district court's dismissal, the Fifth Circuit rejected plaintiffs' contention that defendants' purported knowledge that their actions would ultimately affect prices on the Henry Hub was sufficient to state a claim under the CEA. In so holding, the court noted that the "effect on the Henry Hub, and NYMEX futures contracts, was merely an unintended consequence of the defendants' manipulative trading" and, as a result, the defendants lacked the requisite specific intent. (*Hershey v. Energy Transfer Partners, L.P.*, No. 09-20651, 2010 WL 2510122 (5th Cir. June 23, 2010))

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