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OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 30, 2008
(House)

STATEMENT OF ADMINISTRATION POLICY
H.R. 6604 - Commodity Markets Transparency and Accountability Act of 2008
(Rep. Peterson (D) Minnesota)

The Administration is very concerned about the impact of rising fuel and food prices on the American people. The Commodity Futures Trading Commission (CFTC), which is monitoring the U.S. futures markets closely, has recently taken significant steps to increase transparency in oil futures markets and continues to rigorously enforce existing laws governing U.S. futures markets, including the prohibition against market manipulation.

CFTC is currently conducting a nationwide crude oil market investigation. Since 2002, CFTC has filed 42 enforcement actions charging 72 defendants with violations involving the energy markets, including as recently as July 24, 2008. The Department of Justice has filed more than 47 criminal complaints prosecuting manipulators.

An interagency task force including staff of the CFTC, the Treasury and Energy Departments, and the Federal Reserve issued an interim report on crude oil on July 22nd. The interim report found that rising oil prices are largely due to fundamental supply and demand factors. Global economic growth has led to worldwide increases in the demands upon supply-constrained resources, resulting in rapid price increases in prices for a wide variety of commodities, including those, such as iron ore, that are not traded on futures exchanges.

The Administration is concerned about the current high price of oil and its effect on consumers and the economy. On the basis of these concerns, the President recently lifted an executive prohibition on drilling for oil and natural gas on the Outer Continental Shelf, and urged Congress to remove similar legislative barriers in order to increase domestic production of oil and gas. The President has also repeatedly urged congressional action to: (1) remove the prohibition on completing commercial oil shale leasing regulations to allow access to this promising resource; (2) allow exploration in the Arctic National Wildlife Refuge; and (3) streamline the permitting process for expansions and reconfigurations of refineries.

The Administration is strongly opposed to H.R. 6604, which offers poorly targeted short-term measures that do nothing to address the fundamentals of supply and demand that bear the primary responsibility for current high energy prices. The bill will hurt the competitiveness of American futures markets and place significant, unnecessary burdens on CFTC staff. The new and sometimes redundant authorities and studies in the bill will consume significant CFTC resources and will divert the agency from its core mission of promoting fair and efficient futures markets. If the bill were presented to the President in its current form, his senior advisors would recommend that he veto it.

In particular, the Administration is opposed to section 8, which would fundamentally change

CFTC’s current mission – investigating and pursuing futures market manipulation and fraud – by requiring CFTC to set and administer position limits across a wide range of commodity futures contracts. The current regulatory structure that allows exchanges to set and administer position limits with oversight from CFTC is functioning properly. Further interference by Federal regulators requiring CFTC to manage these position limits directly would be harmful for the markets and burdensome for the agency.

The Administration is seriously concerned about section 14, which, based on an ambiguous definition of “fungible” agreements, could require unprecedented new reporting requirements on certain over-the-counter (OTC) transactions. It also could require CFTC to review thousands of OTC contracts to identify problems and impose and enforce position limits (if possible). CFTC can already access information regarding certain OTC positions that it believes necessary to protect the markets from manipulation and fraud. Requiring the collection and processing of new information on non-standardized, bilateral transactions executed off of any centralized marketplace could overwhelm CFTC resources and divert it from its proper and necessary oversight functions. The Administration is also concerned that the burdens of this mandate could drive liquidity to overseas markets where there is less transparency.

Section 4 of the bill is designed to close the so-called “London and Dubai loopholes” by requiring that Foreign Boards of Trade (FBOTs) seeking direct access to U.S. customers provide daily trading information and adopt position limits for certain contracts comparable to those of regulated markets in the United States. CFTC has already addressed this issue by amending their “no-action letters” with the relevant foreign exchanges earlier this summer and maintains the ability to negotiate proper arrangements with foreign exchanges where necessary. The Administration is concerned that forcing CFTC to take relative market size into account when setting position limits could require tighter position limits for foreign markets, which tend to be smaller. Such a disparity could result in retaliation against exchanges in the United States and impede CFTC’s efforts to work collaboratively with foreign regulators on global market oversight and enforcement.

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