

Highlights of the U.S. Commodity Futures Trading Commission's (CFTC's) enforcement success in the energy sector during FY 2008 include the following:

- *CFTC v. Optiver US, LLC*, No. 08 CIV 6560 (S.D.N.Y. filed July 24, 2008) – On July 24, 2008, the CFTC filed an enforcement action charging Optiver Holding BV, two of its subsidiaries (Optiver US, LLC (Optiver) and Optiver VOF), and three employees (Christopher Dowson (head trader of Optiver), Randal Meijer (head of trading and supervisor of Optiver and Optiver VOF) and Bastiaan van Kempen (Chief Executive Officer of Optiver)), with manipulation and attempted manipulation of New York Mercantile Exchange (NYMEX) Light Sweet Crude Oil, New York Harbor Heating Oil, and New York Harbor Gasoline futures contracts during March 2007; the complaint further charges Optiver and van Kempen with concealing the manipulative scheme and making false statements in response to an inquiry from NYMEX (see CFTC News Release [5521-08](#), July 24, 2008).
- *CFTC v. BP Products North America Inc.*, No. 06-C-3503 (N.D. Ill.) - On October 25, 2007, the court approved a consent order of permanent injunction and other relief settling charges brought by the Commission against BP for manipulating and attempting to manipulate the price of TET propane in February 2004, for cornering the market for TET propane in February 2004, and for attempting to manipulate the price of TET propane in April 2003. The consent order requires that BP pay a \$125 million civil monetary penalty to the CFTC, establish a compliance and ethics program, and install a monitor to oversee BP's trading activities in the commodities markets. The consent order also recognizes the payment of approximately \$53 million by BP into a restitution fund for victims (see CFTC News Release [5405-07](#), October 25, 2007).

In a filing related to the Commission's settlement of its charges against BP, on October 25, 2007 the Criminal Division, Fraud Section of the United States Department of Justice simultaneously filed an information and the entry into a deferred prosecution agreement with BP America Inc., based upon the same underlying conduct as the Commission action. The DOJ's deferred prosecution agreement requires BP America Inc. to pay a \$100 million criminal penalty, plus \$25 million into a consumer fraud fund, as well as payments to the restitution fund and installment of the monitor as noted above. Accordingly, the total monetary sanction that BP is required to pay to resolve the civil and criminal aspects of the unlawful conduct in the TET propane market is approximately \$303 million.

- *In re Kelly*, CFTC Docket No. 08-01 (CFTC filed Oct. 25, 2007) – On October 25, 2008, the CFTC simultaneously filed and settled an enforcement action finding that Paul K. Kelly, a former gasoline trader for BP Products North America Inc., attempted to manipulate the price spread between the November and December 2002 NYMEX unleaded gasoline futures contracts traded on October 31, 2002, the last day of trading for the November 2002 unleaded gasoline futures contract. Sanctions assessed included a civil monetary penalty (\$400,000), and an order to comply with certain undertakings, including not applying for registration with the Commission (see CFTC News Release [5402-07](#), October 25, 2007).
- *CFTC v. Energy Transfer Partners, L.P., et al.*, No. 3-07CV1301-K (N.D. Tex. filed July 26, 2007, settled March 17, 2008) – On March 17, 2008, the court entered an order settling charges against Energy Transfer Partners, L.P. (ETP) and three ETP subsidiaries (Energy Transfer Company, Houston Pipeline Company, and ETC Marketing, Ltd.). The defendants were charged with attempting to manipulate natural gas prices at the Houston Ship Channel (HSC) delivery hub from September 2005 to early December 2005. Sanctions assessed included a permanent

injunction against all defendants and an order that they pay, jointly and severally, a \$10 million civil monetary penalty. (See CFTC News Release [5471-08](#), March 17, 2008).

Enforcement efforts in the forex fraud arena are illustrated in the following litigated result obtained by the CFTC during FY 2008:

- *CFTC v. FxTrade Financial, LLC*, No. 04-2181 (W.D. Tenn.) – On October 18, 2007, a federal district court issued a decision against Gordon Jack Vandeveld, a broker with FxTrade Financial, LLC (FxTrade), finding that he committed forex futures fraud. The court also issued an order of default judgment and permanent injunction against: FxTrade; FxTrade principal Jeffrey A. Mischler; FxTrade brokers Mary Jo Sibbitt; Ernst H. Behr; and Reverie LLC. The court had earlier entered an order of default judgment and permanent injunction against FxTrade principal and broker Lee N. Romano II after he failed to participate in the pretrial process. With issuance of these orders, the defendants in this CFTC anti-fraud forex action were ordered to pay collectively \$9,946,000 in monetary sanctions, which includes \$9,120,000 in civil monetary penalties, and \$826,000, jointly and severally, in restitution to defrauded customers. (See CFTC News Release [5421-07](#), December 12, 2007.)

Highlights of the Commission's cooperative investigations, some of which resulted in millions in restitution and civil monetary penalties, include the following:

Trading Practices on the NYMEX

- A cooperative investigation involving the CFTC and the New York County District Attorney's Office (NYCDA) resulted in Commission actions finding violations related to fraudulent trade allocations (Steven Karvellas, Thomas Maloney Ryan Tremblay) and the improper disclosure of material, non-public disclosure of NYMEX information (Alvin Perez). Based upon the same misconduct, the NYCDA charged these individuals with violation of the Martin Act, a New York State statute that prohibits, among other things, the fraudulent sale of commodities products (Karvellas, Maloney and Tremblay) and with the misdemeanor crime of Commercial Bribe Receiving in the Second Degree (Perez).

See *In re Karvellas*, CFTC Docket No. 08-08 (CFTC filed Apr. 8, 2008); *In re Maloney*, CFTC Docket No. 08-09 (CFTC filed Apr. 8, 2008); *In re Tremblay*, CFTC Docket No. 08-13 (CFTC filed Aug. 28, 2008); *In re Rosenthal Collins Group, L.L.C.*, CFTC Docket No. 08-12 (CFTC filed Aug. 26, 2008); and *In re Perez*, CFTC Docket No. 08-11 (CFTC filed Aug. 26, 2008). (See also CFTC News Releases [5480-08](#), April 8, 2008; [5534-08](#), August 26, 2008; [5535-08](#), August 26, 2008; and [5536-08](#) August 28, 2006.)

Hedge Fund Misconduct

- *CFTC v. Eustace, et al.*, No. 05CV2973 (E.D. Pa.) – On August 13, 2008, a federal district court ordered Eustace to pay more than \$279 million in restitution, offset by any funds distributed by the receiver appointed in the action, and a \$12 million civil penalty in this commodity pool fraud action. The court also ordered PAAMCo to pay restitution of approximately \$276 million, offset by payments by the receiver and Eustace, and an \$8.8 million civil monetary penalty. At the outset of the litigation, the CFTC's action froze all the assets under the control of PAAMCo and Eustace and preserved more than \$70 million for return to pool participants. Through related receivership litigation, an additional \$96 million has been obtained to date for the benefit of defrauded pool participants. (See CFTC News Release [5531-08](#), August 19, 2008.)

- *In re MF Global Inc., CFTC Docket No. 08-02 (CFTC filed Dec. 26, 2007)* – On December 26, 2007, the Commission simultaneously initiated and settled an administrative enforcement action finding that MF Global Inc. (MFG), a registered futures commission merchant, and Thomas Gilmartin (Gilmartin), a registered associated person of MFG, committed supervision and recordkeeping violations arising out of their mishandling of hedge fund accounts that were carried by MFG and managed by Eustace and PAAMCo that sustained net losses of approximately \$133 million. Sanctions assessed included civil monetary penalties (MFG \$2 million; and Gilmartin \$250,000), and an order that Gilmartin comply with certain undertakings, including agreeing to never apply for registration or claim exemption from registration with the CFTC in any capacity. (See CFTC News Release [5427-07](#), December 26, 2007.)

Also on December 26, 2007, the Receiver ad litem for PAAMCo announced that he had settled his action against MFG and Gilmartin arising from the same misconduct as the Commission's action. Pursuant to that settlement that, MFG and Gilmartin paid a total of \$75 million. In settlement of other actions against third parties, the receiver and the receiver ad litem obtained over \$19 million for the benefit of the receivership estate.

On November 8, 2007, the United States Attorney's Office for the Eastern District of Pennsylvania announced the filing of a two count criminal indictment against Eustace, charging commodities fraud, arising out of the conduct alleged in the CFTC's action.

Other significant FY 2008 enforcement actions include:

- *CFTC v. Lake Shore Asset Management Limited*, No. 07 C 3598 (N.D. Ill. amended Feb. 19, 2007) (charging Philip J. Baker and the companies he controlled, registered CPO and CTA Lake Shore Asset Management Limited, the Lake Shore Group of Companies Inc., Ltd., Hanford Investments Ltd., and at least twelve commodity pools controlled by Baker, which operated as a common enterprise under variations of the name Lake Shore Alternative Financial Asset Fund; alleging that the defendants defrauded hundreds of commodity pool participants who collectively invested at least \$300 million to trade commodity futures contracts on U.S. futures markets) (see CFTC News Release [5459-08](#), February 20, 2008).
- *CFTC v. Hudgins*, No. 608CV187 (E.D. Tex. filed May 13, 2008) (charging George D. Hudgins with fraud in connection with his operation of a commodity pool, which traded exchange-traded commodity futures and option contracts; Hudgins' false representations included a declaration that the pool had an investment portfolio of approximately \$80 million, when, in fact, the net value of the accounts associated with the pool was negative \$100,199.38; i.e., the accounts were operating at a loss; the accounts associated with the pool suffered losses of more than \$25 million from 2005 through 2007) (see CFTC News Releases [5500-08](#), May 21, 2008, and [5523-08](#), July 28, 2008).
- *CFTC v. Sentinel Management Group, Inc., et al.*, No. 08CV2410 (N.D. Ill. filed April 28, 2008) (charging registered FCM Sentinel Management Group, Inc. and its president and chief executive officer, Eric A. Bloom, and former senior vice-president, Charles K. Mosley, with fraud and segregation violations involving their handling of \$562 million in commodity customer segregated funds) (see CFTC News Release [5494-08](#), May 1, 2008).