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AMERICAN PUBLIC GAS ASSOCIATION

COMMENT

February 10, 2009

VIA E-MAIL

David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Significant Price Discovery Contracts on Exempt Commercial Markets, 73 *Fed. Reg.* 75888 (December 12, 2008)

Dear Mr. Stawick:

The American Public Gas Association ("APGA") appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission") Proposed Rules on "Significant Price Discovery Contracts on Exempt Commercial Markets," 73 *Fed. Reg.* 75888 (December 12, 2008) ("SPDC Proposed Rules"). The SPDC Proposed Rules are intended to implement the CFTC Reauthorization Act of 2008 ("Reauthorization Act").

APGA

APGA is the national association for publicly-owned natural gas distribution systems. There are approximately 1,000 public gas systems in 36 states and over 700 of these systems are APGA members. Publicly-owned gas systems are not-for-profit, retail distribution entities owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities.

The Reauthorization Act

Over the past several years, and leading up to the passage of the Reauthorization Act, APGA has sounded the alarm with respect to the need for greater oversight and transparency of the over-the-counter markets ("OTC") in financial contracts in natural gas. APGA noted in testimony both before Congress and the Commission, that APGA's members have lost confidence that the prices for natural gas in the futures and the economically linked OTC markets are an accurate reflection of supply and demand conditions for natural gas. APGA further testified that restoring trust in the validity of the pricing in these markets requires a level

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of transparency in natural gas markets which assures consumers that market prices are a result of fundamental supply and demand forces and not the result of manipulation or other abusive market conduct. APGA therefore strongly supported an increase in the level of transparency with respect to trading activity in these markets. For this reason, APGA supported enactment of the Reauthorization Act and, in particular, the provisions of the Reauthorization Act which significantly expanded the Commission's oversight authority with respect to exempt commercial markets having Significant Price Discovery Contracts ("SPDC").

The Proposed Implementing Rules

APGA in general strongly supports the Commission's proposal to implement this additional authority as an important step in bringing greater transparency and oversight to these otherwise opaque markets. APGA believes that the proposed rules implement the Reauthorization Act as intended and will provide the Commission with important additional tools to assure the price integrity of these important markets. Nevertheless, APGA believes that with several modifications the effectiveness of the proposed rules could be increased in order to more completely achieve the intended goals of the Reauthorization Act. APGA recommends that the Commission reconsider three aspects of the rules as proposed. These are: 1) operation of the spot month limits; 2) introduction of a separate new category of "volume accountability rules;" and 3) enhancing the proposed large trader reporting systems.

1. Spot month speculative position limits

The Commission, in its discussion of the proposed rules, emphasized the need for spot month speculative position limits to address issues of possible manipulation in these markets. 73 *Fed. Reg.* 75895. APGA strongly supports the use of spot month speculative position limits as a proven and effective tool for addressing markets with constrained deliverable supplies, which is typical of the markets for natural gas. In this regard, APGA believes that the Commission's proposed rules are a very good foundation for addressing the issue, and recommends that the Commission consider taking additional steps to strengthen the effectiveness of this important regulatory tool.

Under the Reauthorization Act, Core Principle IV applies to exempt commercial markets with SPDCs. Core Principle IV requires electronic trading facilities to establish position limits or accountability rules for traders in SPDCs. The Commission's proposed Guidance on, and Acceptable Practices with respect to Core Principle IV provides that the market adopt rules that set position limits or accountability levels on traders' cleared positions" in SPDCs. 73 Fed. Reg. 75915. The preamble to the proposed rules notes that "[b]ecause deliverable supplies of exempt commodities typically are limited, the Commission believes that it will be necessary for SPDCs to have spot-month limits." 73 *Fed. Reg.* 75895.

The Commission's proposed Acceptable Practices for Core Principle IV recommend that spot month limits be set based upon an analysis of deliverable supplies, or, for a SPDC that is economically equivalent to another contract, the same as for the other contract. However, the Commission's guidance on setting spot month speculative position limits does not require one

exempt commercial market to account for positions that may be held on another registered entity in economically-related SPDCs either in setting or enforcing spot month speculative position limits. In addition, the proposed rules establish different limits for cleared and non-cleared transactions. As a result, speculative position limits will be far less effective than they otherwise could be, enabling a trader to amass a far larger speculative position in the spot month by dividing its position among several markets or market segments for SPDCs.

The market for natural gas financial contracts is composed of a number of segments. Contracts for the future delivery of natural gas are traded on the NYMEX, a designated contract market.[1] Contracts for natural gas are also traded on exempt commercial markets, such as the Intercontinental Exchange ("ICE"), which operates an electronic trading platform for trading non-cleared OTC contracts as well as cleared contracts. OTC contracts may be settled financially or through physical delivery. Financially-settled OTC contracts often are settled based upon NYMEX settlement prices. Physically delivered OTC contracts may draw upon the same deliverable supplies as NYMEX contracts, thus linking the various financial natural gas market segments economically.

In order to effectively limit the size of spot month positions that speculators are able to amass, the spot month limits must take into account each of these segments. It is a major and obvious loophole to set speculative position limits only with respect to cleared SPDCs, particularly where both cleared and non-cleared contracts are traded on the same platform. By not setting a unified speculative position limit that is cumulative of cleared and non-cleared SPDC contracts along with the exchange-traded contracts which provide the cash-settlement reference price, the Commission's rules, in essence, enable a potential manipulator to amass a position well in excess of the intended speculative position limit. If the spot month limit were set at one-fourth potential deliverable supplies, a trader dividing its position among a contract market, cleared SPDC and non-cleared SPDCs on the same or different exempt commercial markets could conceivably control the vast majority of deliverable supplies, all within the speculative position limits as proposed.[2]

The Commission has the authority and ability to propose rules that would provide more effective speculative position limits. First, the Commission should require that each registered entity set speculative position limits taking into account the positions a trader may hold in a related SPDC on another registered entity. Thus, if a physically-delivered SPDC contract were unique, its spot month speculative limit would be set solely in relation to a percentage of total deliverable supplies. However, if a physically delivered SPDC were the second contract to draw on the same deliverable supplies as an existing contract, it would have to take into account that fact in setting the level of its spot month limit or in its application to a trader on its market.

Secondly, as discussed in greater detail below, the Commission has proposed a separate limit for uncleared SPDCs, which has been termed a "volume accountability level." Such

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[1] NYMEX is part of the CME Group.

[2] This has not been a problem with respect to regulated futures contracts because liquid contracts for a particular commodity have tended to trade on only a single exchange. And, with respect to options and futures, the speculative position limits have been expressed as a unified amount, with options calculated on a futures-equivalent basis.

uncleared SPDCs should be included in calculation of the size of a trader's position for speculative position purposes. As the Commission notes, "uncleared transactions in SPDCs potentially play an important role in . . . price formation." 73 *Fed. Reg.* at 75896. Despite recognition of the important role that uncleared transactions play in price formation, the speculative position limits as proposed apply only to cleared transactions and do not require that uncleared transactions be included in calculating whether a trader has violated a spot month speculative position limit. This clearly and inexplicably weakens the prophylactic protection that spot month speculative position limits are intended to provide.

Thirdly, the Commission should adopt its own speculative position limits, particularly in the spot-month, for economically-related SPDCs that are traded on more than one registered entity. By adopting Commission-set speculative position limits, the Commission would be able to aggregate positions across markets and enforce unified position limits, thus preventing a trader from amassing unduly large positions in the spot month by entering positions in economically equivalent SPDCs on different markets or by trading a combination of cleared and uncleared transactions on the same market.

In light of the interconnectedness of SPDC contracts traded on different registered entities, a dual system of Commission and market speculative position limits would be a far more effective regulatory tool than reliance only upon market-imposed speculative position limits. Such a dual system is not new; it has existed as part of the regulatory landscape since enactment of the Commodity Exchange Act in 1936.[3] The Commission traditionally has established its own speculative position limits for agricultural commodities, which like natural gas, have limited deliverable supplies. Moreover, the Reauthorization Act specifically provides the Commission with authority to establish Commission set-speculative position limits for SPDCs.[4]

Nor would Commission-set speculative position limits for SPDCs impose undue hardship for traders. Each trader would be free to trade up to the limit at a single market or to break up its position among, or net its position across, markets listing economically linked SPDC contracts.[5]

Recent events in the economically linked markets for natural gas have shown the danger of traders being able to move positions from one market to another in order to evade application of a market's position accountability rule or position limit.[6] A unified limit administered by the Commission across all markets, in addition to the limits adopted and administered by each separate market would effectively address this issue and provide an effective and meaningful limitation on the total size of positions that a trader could amass in the delivery month.

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[3] See 17 C.F.R. Part 150 for the Commission's rules which establish a dual system of Commission and exchange-set speculative position limits for certain commodities.

[4] *See*, section 13203 (g) of the Reauthorization Act.

[5] This in essence would operate the same as the single month, all months combined limit which enables a trader at the limit to concentrate all positions in one month or break them up across months. A trader could be at the limit at a single market and also hold off-setting positions at another market without violating the limit. No, or minimal, changes in reporting systems would be required; the Commission could rely for the most part on reports that are proposed to be filed by the markets or by their clearing members.

[6] *See "Excessive Speculation in the Natural Gas Market,"* Report of the U.S. Senate Permanent Subcommittee on Investigations (June 25, 2007) ("PSI Report").

Volume accountability

As noted above, the Commission is proposing to establish an entirely new category of position limitation. The Commission's discussion of the proposed rules notes that "for the purpose of applying speculative limits to positions in SPDCs, the ECM should apply speculative position limits to cleared positions only." 73 *Fed. Reg.* 75896. With respect to uncleared SPDCs the Commission is proposing to establish an entirely new and separate limit, the "volume accountability level." This new category of volume accountability level would operate the same as a position accountability rule, but would be administered independent from both speculative position limits and non-spot month position accountability rules.

In this regard, with respect to uncleared SPDC contracts, the Commission proposes in new Appendix B to Part 36 to require "accountability procedures for monitoring traders' overall positions and to take that information into account when ascertaining whether an individual trader's overall position poses a threat to the market."[7] However, where this general requirement is specifically addressed in the Acceptable Practices, it merely requires that a spot-month volume accountability level be set equal to the spot-month speculative position limit.[8] Thus, it is not clear from the Acceptable Practices whether in addition to the spot month volume accountability limit, such volume accountability levels for uncleared transactions are also required for non-spot months and all-months-combined. If the Commission determines to adopt its proposal to establish a new volume accountability level, the Commission should clarify that such non-spot month volume accountability levels are also required to be set at the same levels as position accountability or speculative position limit levels for cleared transactions in the non-spot months.

Proposing to establish a new category of position limitation raises a more fundamental issue, however. The Commission justifies its proposal to establish completely separate volume accountability rules by reasoning that, although uncleared transactions in SPDCs potentially play an important role in price formation,

> the Commission is cognizant of the fact that uncleared trades conducted on the ECM may be offset by trades done off the facility. Such offsetting transactions consummated outside of an ECM typically are not reported to the facility. Thus, the ECM likely would find it difficult to net uncleared transactions and maintain records of traders' uncleared positions in a given SPDC.

73 *Fed. Reg.* 75896.

By establishing a separate volume accountability category, however, the proposed rule potentially would enable speculative traders to amass a larger position before tripping any type of investigative level or limit. More critically, as noted above, by permitting a separate volume accountability level in the spot-month, a trader can readily avoid a spot month speculative

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[7] See, Proposed Appendix B, Core Principle IV(b)(2)(ii).
[8] See, Proposed Appendix B, Core Principle IV(b)(5).

position limit by holding a combination of cleared and uncleared positions, even on the same market.

Although a trader's holding off-setting positions outside of the clearing organization for the exempt commercial market may complicate the application of speculative position limits, all positions must be counted in order to have a meaningful limitation on excessively large speculative positions. The Commission implicitly recognizes this point, by advising that "uncleared transactions also should be aggregated by trader on a net basis in order to determine whether such trader's volume of uncleared trades exceeds the spot-month volume accountability level."[9] 73 *Fed Reg.* 75896. If a trader is expected to aggregate net trades for purposes of determining whether that trader exceeds a spot-month volume accountability level, why shouldn't that net position be included in the over-all spot month speculative position limit level?

Moreover, the fact that off-setting positions may be consummated off of the trading facility does not minimize the need to enforce a spot month speculative position limit. Determining that a particular transaction is a hedge transaction, and thus deducting it from the total positions subject to the speculative position limit generally requires a trader to compare exchange-traded positions to non-exchange (cash) activities.[10] This is no different when determining that a position held on a registered entity is a bona fide hedge, and thus eligible to exceed the spot month speculative position limit as it would be to determining that a SPDC transacted on a registered entity is off-set by a contract transacted off the registered entity.[11]

Large trader reporting

The Commission is proposing technical and conforming amendments to its large trader reporting rules and to extend its large trader reporting system to SPDCs through the definition of "clearing member," "clearing organization" and amending the definition of reporting market. Under the proposed rules, the Commission would require clearing members to file reports with the Commission on large positions in SPDC contracts and identify the owners of such positions. SPDC traders would be subject to the special call provisions of Commission Rule 18.05. These

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[9] This is consistent with the Commission's conclusion that limits should apply to all cleared positions in economically identical contracts regardless of whether they are entered into on the trading facility. The Commission concluded that "it is appropriate for position limit requirements to be applied to overall positions regardless of where they originated." 73 *Fed. Reg.* 75896.

[10] The fact that off-setting positions may be held by a trader as uncleared transactions or may have been executed away from the market is not any different from the traditional application of hedge exemptions. In that respect, the off-setting cash position which defines the futures trade as a hedge (and thus exempt from application of the speculative position limit) by definition is a separate uncleared transaction not executed on the exchange. To the extent that positions which are off-set by uncleared positions may not qualify as bona fide hedges, they might qualify within existing spread exemptions or as necessary, within a newly crafted exemption. Traditional administration of speculative position limits require that a trader that wishes to carry a position that exceeds the speculative position limit demonstrate that it has off-setting cash positions. There is no reason why administration of speculative position limits for SPDCs, regardless of whether they are cleared or uncleared, could not operate the same way.

[11] In the case of SPDCs, uncleared contracts may off-set and thereby net other cleared or uncleared economically-related SPDCs. The overall net position of such cleared and uncleared contracts would be subject to the spot-month speculative position limit.

proposed amendments, without more, would not routinely provide information to the Commission on a trader's large uncleared positions. Thus, the proposed amendments to the large trader reporting rules would leave a significant gap in the Commission's routine information collection with respect to SPDCs.

The Commission is proposing a new rule 16.02, which potentially may address part of this information gap.[12] Proposed new rule 16.02 would require all reporting markets, which include exempt commercial markets trading SPDCs, to report trade data and related order information for each transaction executed on the market. The Commission in the preamble to the *Federal Register* notes that such data "upon request would be accompanied by data that identifies or facilitates the identification of each trader for each transaction or order included in a submitted report." 73 *Fed. Reg.* 75898. However, the text of proposed rule 16.02 provides that such identifying information shall be included in the market's report upon request *"if the reporting market maintains such data."*

New rule 16.02 applies to all markets, including DCMs, and codifies the current exchange practice of making available to the Commission transaction information which can be used for financial and trade practice surveillance. If the Commission intends to use data of transactions on exempt commercial markets to construct a fuller picture of a trader's large positions in SPDCs, both cleared and uncleared, it will be necessary to obtain identifying information matching the transaction with the trader. Accordingly, if it is the Commission's intent to use this transaction-based information to fill the gap in its routine reporting with respect to uncleared transactions that are executed on an exempt commercial market, the Commission should consider explicitly requiring exempt commercial markets to collect and maintain such identifying information on all transactions and to provide such information to the Commission in their rule 16.02 transaction reports.

Even with this change, however, the rules as proposed will nevertheless only provide the Commission with an incomplete picture of the size of a trader's position in economically linked SPDCs. Nothing in the current large trader reporting system addresses the Commission's need to *routinely* obtain information with respect to economically-related uncleared SPDCs that are effectuated off of a registered entity.[13]

Reliance on information on cleared SPDCs which is available through clearing member reports, even if augmented with data on uncleared transactions under proposed new rule 16.02, renders only a partial picture of a trader's overall position in economically linked SPDCs. Under the proposed large trader reporting system, if the trader keeps its trades below the applicable position (or volume) accountability level or speculative position limit on the registered entities,

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[12] In this regard, the Commission notes in the preamble that it would rely on the information provided under proposed rule 16.02, "[f]or purposes of enforcing SPDC position limits and monitoring large SPDC positions," 73 *Fed Reg.* 75898. However, insofar that the Commission has proposed that speculative position limits apply only to cleared positions, in SPDCs, and information on cleared positions is available through clearing member reports it is not clear how or to what extent the information under proposed Rule 16.02 would be used.

[13] Economically-related transactions effectuated off of the exempt commercial market but which are cleared are included in the clearing member's reports.

the Commission potentially would not know to issue a special call to the trader itself for information on the trader's non-cleared transactions executed off of a registered entity and potentially would never discover the full extent and size of the trader's speculative position until after a problem in the market had already occurred. In this way, a trader could amass an excessively large speculative position while avoiding Commission knowledge, or scrutiny, of its activities.

As discussed above, APGA strongly believes that the Commission must see a large trader's entire position in economically-related SPDCs to effectively police this market. In this regard, APGA has testified before the House of Representatives Agriculture Committee that the

> lack of transparency has led to a growing lack of confidence in the natural gas marketplace. Although the CFTC operates a large trader reporting system to enable it to conduct surveillance of the futures markets, it cannot effectively monitor trading if it receives information concerning positions taken in only one, or two, segments of the total market. Without comprehensive large trader position reporting, the government will remain handicapped in its ability to detect and deter market misconduct or to understand the ramifications for the market arising from unintended consequences associated with excessive large positions or with certain speculative strategies. If a large trader acting alone, or in concert with others, amasses a position in excess of deliverable supplies and demands delivery on its position and/or is in a position to control a high percentage of the deliverable supplies, the potential for market congestion and price manipulation exists. Similarly, we simply do not have the information to analyze the over-all effect on the markets from the current practices of speculative traders.
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> Over the last several years, APGA has pushed for a level of market transparency in financial contracts in natural gas that would routinely, and prospectively, permit the CFTC to assemble a complete picture of the overall size and potential impact of a trader's position . . . . APGA is optimistic that the enhanced authorities provided to the CFTC in the provisions of the CFTC reauthorization bill will help address the concerns that we have raised, but recognizes that more needs to be done to address this issue comprehensively.[14]

The Commission has the opportunity through these proposed rules, using the authorities provided to it by the Reauthorization Act, to plug this potential loophole and to establish a large trader reporting system which truly enables it routinely and prospectively to assemble a complete picture of the overall size and potential impact of a trader's position.

The Reauthorization Act amended section 4i of the Commodity Exchange Act to include within its provisions the obligation of any person trading SPDCs on an electronic trading facility

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[14] See, *To review legislation amending the Commodity Exchange Act: Hearing Before the House Agriculture Committee*, 110th Cong., 2nd Sess. (July 10, 2008) (statement of Michael Comstock, Acting Director for the City of Mesa, Arizona Gas System).

or submitting for clearing any transaction that is fungible with a SPDC to file such reports as the Commission shall require by rule and to keep and maintain books and records of all such transactions and of cash or spot transaction in such commodity.[15] Accordingly, this provision of the Reauthorization Act provides the Commission with authority to require that a trader with a reportable position in SPDCs on an exempt commercial market file with the Commission such reports as the Commission shall direct. Based on this authority, the Commission in the preamble to the proposed rules stated that, "[u]nder the proposed regulations, SPDC traders likewise would be subject to the special call provisions of part 18 of the Commission's regulations for reportable positions."[16]

The Commission in 2007, amended its rule 18.05 to make explicit its authority to require that "any pertinent information concerning such positions, transactions or activities" be furnished to the Commission [upon request] with respect to all positions and transactions in the commodity on all reporting markets, over the counter and/or pursuant to Sections 2(d), 2(g) or 2(h)(1)-(2).[17] Based on this understanding of its authority and the language of Rule 18.05, therefore, the Commission could require traders with reportable positions in SPDCs on any registered entity to file information or reports concerning their positions in economically linked SPDC which they enter into in the over-the-counter markets.

Although the Commission's intent to apply rule 18.05 to SPDC traders is plainly stated in the preamble, in order to clarify the applicability of the Rule 18.05 special call procedures, the Commission should amend paragraph (a) of rule 18.05 by adding the italicized language to refer specifically to SPDCs, so that the provision would read, "Every trader who holds or controls a reportable futures or option position *or a reportable position in a significant price discovery contract traded on an exempt commercial markets operating pursuant to Sections 2(h)(3)–(5) of the Act* shall keep books and records showing all details concerning all positions and transactions in the commodity:"

More critically, the special call authority of Rule 18.05 is not sufficiently robust to enable the Commission to assemble the complete picture of a large trader's position in economically-related SPDCs. APGA believes that the *routine* collection of information from large traders is necessary in order to effectively accomplish the prophylactic purposes of the large trader reporting system. Without providing for the routine collection of information from reportable traders in SPDCs with respect to their positions in uncleared SPDCs that are effectuated off of a registered entity, the Commission is leaving to chance whether it will have sufficient information to know that a special call should be issued for such information in advance of a potential manipulation, market distortion or congested market occurring.

The section 4i authority on which rule 18,05 is based, and which was amended by the Reauthorization Act to apply to SPDCs, authorizes the Commission to require SPDC traders with

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[15] Persons trading on a contract market were already subject to this requirement under section 4i as it existed before the Reauthorization Act amended the provision.

[16] 73 *Fed. Reg.* 75898.

[17] 72 Fed. Reg. 34413, 34416 (June 22, 2007)

a reportable position on a registered entity to file routine reports with respect to their large over-the-counter positions. APGA believes that in order to have a full picture of a large trader's position in economically-related SPDCs in all of the market segments in which they can be traded the Commission must include such a routine reporting requirement in its rules and not simply rely on Rule 18.05 as it currently is structured.

Requiring traders to file reports with the Commission on their large positions has historical precedent and would merely be reinstating a former Commission requirement. To be sure, until the early 1980's the Commission collected large trader reports from traders on a routine basis with respect to their futures positions and daily transactions. These '03 reports were filed by large traders in addition to the information filed by clearing members relating to large positions. Thus, prior to the Commission's sole reliance on the current special call procedures under rule 18.05, the Commission required reportable large traders based on its section 4i authority to also directly file with the Commission routine reports regarding their trading positions and transactions.[18] The Commission dropped the requirement that traders routinely file such large trader reports because the reports were largely duplicative of information filed with the Commission by clearing members.[19]

Requiring reportable traders in SPDCs again to file with the Commission reports with respect to their uncleared positions that are effectuated away from a registered entity is justified because the information will otherwise not be routinely included in the information collected through the reporting system and is not duplicative of the information that is otherwise proposed to be collected. Of course, the Commission would be expected to balance a number of factors, such as whether the reports can be automated and the size of such non-cleared contracts that a trader must hold before it can be expected to impact price formation in establishing the contract level at which a SPDC trader on a registered entity becomes reportable with respect to these individually-filed reports and the relative size of uncleared transactions that would have to be reported to the Commission of these reports.

If the Commission determines not to fill this loophole in the proposed large trader reporting system as we suggest, APGA believes that the Commission at a minimum must adopt a formal policy of aggressively using its Rule 18.05 authority to request information with respect to a SPDC trader's position effectuated away from a registered entity. Such a policy could require staff to issue a special call for information on such uncleared positions for all traders that have a certain size position on a registered entity. That triggering level should be below speculative position limit, position accountability levels and volume accountability levels so that it is not possible for a trader to hide the true size and extent of its speculative position by merely keeping the positions that it holds on registered entities slightly below those limit levels.

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[18] Traders are still required to file routine reports directly with the Commission regarding their cash positions in grains and/or cotton.

[19] These '03 reports were filed on a daily basis by large traders, and were in addition to the '01 reports filed by clearing members which included similar position information.

Following the activities of Amaranth Advisors LLC, APGA has consistently called for greater controls on excessively large speculative positions and for greater transparency in these markets. The activities of Amaranth Advisors LLC have demonstrated, and underscore, the economic relation between the futures markets and the OTC markets. APGA has consistently called attention to the fact that the CFTC, the cop on the beat, had incomplete information with respect to the activities in these markets of the largest traders, such as Amaranth Advisors. APGA has also consistently noted, however, that a comprehensive large trader reporting system would have enabled the CFTC to better detect and deter this and similar types of market abuses before they occurred and that such activities are more likely to be detected or deterred when the government is receiving information with respect to a large trader's overall positions, and not just those taken in the regulated futures market.

It is critical to bear in mind that although the Commission's very successful efforts to punish those that manipulate or otherwise abuse markets after-the-fact are important, catching and punishing those that manipulate markets after a manipulation has occurred is not an indication that the system is working. To the contrary, by the time these cases are discovered using the tools that were previously available to government regulators, APGA's members, and their customers, have already suffered the consequences of those abuses in terms of higher natural gas prices.

For these reasons, APGA strongly, supported passage of the Reauthorization Act. Natural gas is a lifeblood of our economy and millions of consumers depend on natural gas every day to meet their daily needs. It is critical that the price those consumers pay for natural gas comes about through the operation of fair and orderly markets and through appropriate market mechanisms that establish a fair and transparent marketplace. It is now the Commission's responsibility to ensure that the goals of the Reauthorization Act of increasing transparency with respect to the pricing in the natural gas markets are fully achieved.

The Reauthrorization Act was intended to remedy the situation and provide the Commission with the tools so that it could assemble a complete picture of the activities of the largest traders with respect to all of the market segments in which they may operate. In this regard, APGA believes that it is incumbent upon the Commission to ensure that it makes full use of all of the authorities that it has under the Reauthorization Act, the Commodity Exchange Act and its rule to ensure that it provides the greatest degree of transparency possible. To do otherwise would mean that the Commission in its implementing rules has left gaps in its ability to avert possible future manipulations, market distortions or market congestion.

APGA applauds the Commission's proposed rules and urges it to incorporate the enhancements that we have identified in this letter in the final rules in order to ensure that the Commission has the fullest panoply of tools possible so that it will not again be in the position of having an incomplete picture of the full extent of a trader's position in a Significant Price Discovery Contract. The goals of the Reauthorization Act will be met if the Commission's proposed implementing rules enable the Commission to (1) detect a problem before harm has

been done to the public through market manipulation or price distortions; (2) protect the public interest; and (3) ensure the price integrity of the markets.

Finally, whether the surveillance structure proposed by the Commission is successful depends in the first instance upon the Commission finding contracts to be SPDCs under the provision of the Reauthorization Act. In exercising its discretion and finding contracts to be SPDCs under the Reauthorization Act, the Commission should bear in mind that this legislation is remedial in purpose and intent and that the Commission as a consequence should carry out its mandate under the Reauthorization Act thoroughly and energetically.

We would be happy to discuss our comments or any of the issues raised by the proposed rules at greater length with the staff. Please feel free to contact APGA's Executive Vice President, David Schryver, or Paul M. Architzel of Alston & Bird, LLP, outside counsel to APGA.

Respectfully submitted,

Bert Kalisch
President & CEO

cc: Acting Chairman Dunn
Commissioner Lukken
Commissioner Chilton
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