

16 CFR Part 317

FEDERAL TRADE COMMISSION

[Project No. P082900]

RIN 3084

Public Workshop Concerning Petroleum Market Manipulation Rulemaking

AGENCY: Federal Trade Commission.

ACTION: Notice announcing public workshop.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) will host a public workshop to discuss issues arising from, and comments submitted in regard to, its rulemaking proceeding concerning Prohibitions on Market Manipulation and False Information in Subtitle B of Title VIII of The Energy Independence and Security Act of 2007 (“EISA”). In particular, the workshop will consider the desirability and scope of the proposed rule prohibiting market manipulation in wholesale petroleum markets. The Commission will publish an agenda on its website prior to the workshop.

DATES: The workshop will be held on Thursday, November 6, 2008, in Room H-432 of the Federal Trade Commission’s Headquarters Building, located at 600 Pennsylvania Avenue, NW, Washington, DC 20580. Requests to participate as a panelist must comply with all applicable requirements set forth in this document and must be received by October 6, 2008. To be considered as a panelist for the workshop, interested parties must also submit a comment in response to the FTC’s Notice of Proposed Rulemaking (“NPRM”) in this matter¹ by the close of the comment period on October 17, 2008.²

¹ FTC, *Prohibitions On Market Manipulation and False Information in Subtitle B of Title VIII of The Energy Independence and Security Act of 2007*, 73 FR 48317 (Aug. 13, 2008). The NPRM was announced in a press release on August 13, 2008, *available at* <http://www.ftc.gov/opa/2008/08/nprm.shtm>.

² Specific instructions for submitting a comment are included in the NPRM. *See* 73 FR 48317. Please note that all such comments, like requests to participate, are public filings and will be placed on the public record of this proceeding, including the FTC’s public website. *See* footnote 3 below for further information.

ADDRESSES: Requests to participate in the public workshop may be filed in paper form or sent via e-mail to mmr@ftc.gov,³ and should refer to “Market Manipulation Rulemaking Workshop – Request to Participate, P082900” to facilitate organization of such requests. Requests must comply with all other applicable requirements set forth in the SUPPLEMENTARY INFORMATION section below and elsewhere in this document. A request to participate filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex G), 600 Pennsylvania Avenue, NW, Washington, DC 20580. Because paper mail in the Washington area, and specifically to the FTC, is subject to delay due to heightened security screening, please consider submitting your request to participate via e-mail to: mmr@ftc.gov.

The workshop will be open to the public, and there is no fee for attendance. For admittance to the building, all attendees will be required to show a valid photo identification, such as a driver’s license. Pre-registration is not required for attendees, but persons desiring to participate as panelists must submit a request to participate and file a comment in response to the FTC’s NPRM in this matter. Members of the public and press who cannot attend in person may view a live webcast of the workshop on the FTC’s website. The workshop will be transcribed, and the transcript will be placed on the public record.

The workshop venue will be accessible to persons with disabilities. If you need an accommodation related to a disability, call Carrie McGlothlin at (202) 326-3388. Such requests should include a detailed description of the accommodations needed and a way to contact you if we need more information. Please provide advance notice of any needs for such accommodations.

³ Please note that your request constitutes a public filing before the Commission, and will be placed on the public record of the proceeding, including on the publicly accessible FTC website, at <http://www.ftc.gov/os/publiccomments.shtm>. Therefore, your request should not include any sensitive or confidential information. In particular, it should not include any sensitive personal information – such as any individual’s Social Security Number; date of birth; driver’s license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number – or any sensitive health information, such as medical records or other individually identifiable health information. Your request should also not include any “[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential. . . .,” as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission rule 4.10(a)(2), 16 CFR 4.10(a)(2) (2008).

The Federal Trade Commission Act and other laws the Commission administers permit the collection of requests to participate in the above workshop to consider and use in this proceeding as appropriate. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals before placing requests to participate on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at <http://www.ftc.gov/ftc/privacy.shtm>.

FOR FURTHER INFORMATION CONTACT: Catherine Harrington-McBride, Bureau of Consumer Protection, Federal Trade Commission, Market Manipulation Rulemaking Workshop, P.O. Box 2846, Fairfax, VA 22031-0846; (202) 326-2452; mmr@ftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EISA became law on December 19, 2007.⁴ Section 811 of EISA prohibits “any person” from directly or indirectly: (1) using or employing “any manipulative or deceptive device or contrivance;” (2) “in connection with the purchase or sale of crude oil gasoline or petroleum distillates at wholesale;” (3) that violates a rule or regulation that the FTC “may prescribe as necessary or appropriate in the public interest or for the protection of United States citizens.”⁵

On August 13, 2008, the FTC issued an NPRM seeking public comments on a proposed rule prohibiting market manipulation in the petroleum industry.⁶ The proposed Rule would make it unlawful for any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale:

- (a) To use or employ any device, scheme, or artifice to defraud,
- (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
- (c) To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

The comment period on the proposed Rule closes on October 17, 2008. The Commission has scheduled a public workshop for Thursday, November 6, 2008, to allow interested parties to discuss the proposed Rule and comments filed in response to the NPRM.

II. Issues for Discussion at the Workshop

The workshop will address the desirability and scope of the Commission’s proposed Rule prohibiting market manipulation in wholesale petroleum markets. The Commission will

⁴ Pub. L. No. 110-140, *codified at* 42 U.S.C. 17001-17386.

⁵ 42 U.S.C 17301.

⁶ The Commission previously issued an Advance Notice of Proposed Rulemaking (“ANPR”) in this proceeding. FTC, *Prohibitions On Market Manipulation and False Information in Subtitle B of The Energy Independence and Security Act of 2007*, 73 FR 25614 (May 7, 2008). The ANPR was announced in a press release on May 1, 2008, *available at* <http://www.ftc.gov/opa/2008/05/anpr.shtm>.

consider the views expressed at the workshop, along with previously submitted comments, in determining the desirability of promulgating a market manipulation rule and the contours of any such rule. The issues that will be discussed include the basis for and the contours of the proposed Rule; the element of scienter and the recklessness standard proposed by the Commission to satisfy the scienter element; and the Commission's decision not to require a showing of price effects in order to establish a violation of the proposed Rule.

The Commission based its proposed Rule on Securities and Exchange Commission ("SEC") Rule 10b-5.⁷ The proposed Rule would prohibit fraud and deception in wholesale petroleum markets. At the workshop, staff will examine support for and opposition to this approach, as well as any alternatives raised in response to the NPRM. Staff will also explore the Rule 10b-5 concept of fraud and deception, including the contours of fraud and deception under securities law, and how such concepts might apply to wholesale petroleum markets.

The NPRM makes clear that the Commission anticipates requiring a showing of intent in determining whether there has been a violation of any final market manipulation rule. In the NPRM, the Commission indicated that a showing of recklessness may satisfy the intent requirement. At the workshop, staff will examine the types of evidence that could establish the requisite level of intent, with a particular focus on the evidentiary proof used to establish intent under securities law precedent. In addition, staff will explore the potential costs and benefits to industry and consumers of permitting a showing of recklessness to satisfy the intent element.

In the NPRM, the Commission noted that it does not anticipate requiring a showing of price effects as an element of a violation of any final market manipulation rule. At the workshop, staff will explore whether a showing of price effects should be required, and the advantages and disadvantages of requiring evidence of such effects. Staff also anticipates examining the kinds of direct or indirect evidence that would demonstrate price effects from manipulative or deceptive conduct in wholesale petroleum markets, including the treatment of such evidence under relevant securities law precedent.

III. Requests to Participate as Panelists

As noted earlier, parties interested in participating as panelists must submit written comments addressing the issues raised in the NPRM, in addition to a formal written request to participate in the form and manner described above. Parties must include in their request a brief statement setting forth their expertise or knowledge of the issues on which the workshop will focus, as well as their contact information, including, if available: a telephone number, facsimile number, and e-mail address to enable the FTC to notify requesters if they have been selected to participate.

FTC staff will select panelists based on the following criteria: 1) the party has expertise in or knowledge of the issues that are the focus of the workshop; 2) the party's participation

⁷ 17 CFR 240.10b-5.

would promote a balance of interests represented at the workshop; and 3) the party has been designated by one or more interested parties (who timely file requests to participate) as a party who shares the interests of the designator(s). Members of the general public who attend the workshop may have an opportunity to make brief oral statements presenting their views on issues raised in the NPRM. Oral statements by members of the general public will be limited on the basis of the time available and the number of persons who wish to make statements.

By direction of the Commission.

Donald S. Clark
Secretary