

**Statement of Chairman Leibowitz
Crude Oil Price Manipulation Rule Making, Project No. P082900**

When Congress passed the Energy Independence and Security Act of 2007, it authorized the Commission to develop a rule to prevent manipulation in wholesale energy markets.¹ The goal of Congress was for the Commission to detect and prevent market manipulation that might lead to higher gas prices for consumers. After a thorough and intensive process, the Commission has started to do just that. The rule issued by the Commission today is a broad anti-fraud measure that will help us prohibit conduct that harms consumers but that may not violate antitrust laws.

We are going to use this authority as aggressively as possible to stop market manipulation that drives up prices at the pump.

Trade associations representing the oil industry have voiced concern about the new rule. They argue that it will chill business conduct in the service of stopping something that they don't believe is happening in the first place. These industry advocates have proposed several specific changes that would weaken the rule – requiring a higher scienter standard under the general liability provision, requiring an explicit market distortion element for the entire rule, and entirely eliminating liability for omissions.²

I am fundamentally opposed to these proposals. They would effectively neuter the rule and, as my colleague Commissioner Rosch notes in his concurring statement, they would undermine Congressional intent. For example, the proposed changes would make it harder – if not impossible – to prosecute those who manipulate the market by intentionally omitting critical information from their communications, even when those omissions distort market conditions and raise gasoline prices for all Americans. Such omissions can be every bit as deceptive as any other type of fraudulent conduct, so it is crucial that we have the ability to prevent and prosecute them. A rule that does not allow us to go after such conduct would limit our ability to protect consumers.

¹ Congress authorized the rule in section 811 of the Act using language from an earlier bill offered by Senator Maria Cantwell. *See* Petroleum Consumer Price Gouging Protection Act, S. 1263, 110th Cong. §§ 4 and 5(a) (2007).

² *See generally*, Comments of the American Petroleum Institute and the National Petrochemical and Refiners Association in Response to Revised Notice of Proposed Rulemaking (May 20, 2009), *available at* <http://www.ftc.gov/os/comments/marketmanipulation3/541354-00009.pdf>.

The rule as proposed already takes into account legitimate industry concerns. In fact, we responded directly to those concerns by modifying the more expansive proposal in the draft rule we released last summer, originally based on the Securities and Exchange Commission rule 10b-5, to accommodate industry worries.³ The current rule, as modified, strikes the right balance; it gives the Commission the authority to stop fraudulent conduct in energy markets but does not undermine appropriate business activity.

It is only the fact that gas prices were over four dollars per gallon a year ago that keeps us from thinking that prices are too high today. If we water down this rule as suggested by the industry, it would hinder our ability to stop manipulation of wholesale petroleum markets. That would undermine the intent of Congress, and undermine the efforts of the Commission to protect consumers and do our job.

³ *See, e.g., id.* at 1 (“In particular, API and NPRA welcome the Commission’s recognition that wholesale petroleum markets differ significantly from securities markets and the Commission’s efforts to tailor the proposed rule to reflect those differences.”).