

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Prohibition of Energy Market Manipulation

Docket No. RM06-0000

FILED
OFFICE OF THE
SECRETARY
2005 DEC 28
11:29
FEDERAL ENERGY
REGULATORY COMMISSION

**SUPPLEMENTAL REPLY COMMENTS OF
THE INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC.**

On October 20, 2005, the Commission issued a Notice of Proposed Rulemaking on the Prohibition of Energy Market Manipulation (“NOPR”).¹ In response to the NOPR, the International Swaps and Derivatives Association, Inc. (“ISDA”) submitted comments and reply comments. ISDA hereby submits a supplement to its reply comments. While ISDA recognizes that the comment date has passed, it offers this supplement to aid the Commission in its decision-making process.

Supplement to Reply Comments

ISDA supports adoption of the first and third prongs of the proposed rule because they track the language in Sections 315 and 1283 of the EAct. ISDA expressed concern in its initial comments with the Commission’s proposal to adopt the second prong of Rule 10b-5, which prohibits a wholesale energy market participant from making an untrue statement of material fact, or omitting a material fact, in an effort to mislead. ISDA continues to support the elimination of that prong because disclosure concepts developed for the securities markets should not be applied to bilateral energy market transactions.

¹ *Prohibition of Energy Market Manipulation*, 70 Fed. Reg. 61,930 (Oct. 27, 2005).

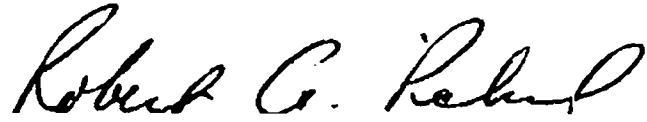
If, however, the Commission chooses to retain the second prong of the rule, ISDA suggests that the Commission amend the language to reflect the existing duty to provide accurate information under Market Behavior Rule No. 3. Accordingly, the rule would read:

- (a) It shall be unlawful for any entity, directly or indirectly, . . .
- (2) to make to the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers 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
(Underlining indicates modification to the proposed rule)

This approach is consistent with the Commission's regulatory regime which, unlike the securities laws, only requires market participants to disclose information to the Commission and specified others -- not the general public. If adopted, this additional clarification would eliminate much of the regulatory uncertainty that would result from the adoption of the second prong as proposed by the Commission.

Alternatively, if the Commission chooses to retain the second prong of the rule and chooses not to amend the language as suggested above, then the Commission should make clear in the order adopting the rule that its intent is to limit the scope of the second prong to communications with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers.

Respectfully submitted,



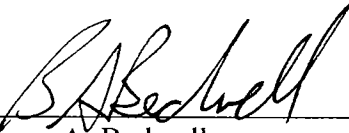
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Dated: December 28, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 28th day of December, 2005.



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