

## **FERC Issues Initial Decision That Former Hedge Fund Trader Violated Market Manipulation Rule**

**January 25, 2010**

On January 22, the Federal Energy Regulatory Commission (FERC) issued an Initial Decision determining that a former hedge fund trader violated FERC's Anti-Manipulation Rule.<sup>1</sup> The decision, issued by Administrative Law Judge (ALJ) Carmen A. Cintron, is a major step in concluding a lengthy, ongoing investigation initiated by FERC in July 2007.<sup>2</sup>

The ALJ's decision involves allegations that Brian Hunter, former President of Amaranth Advisors Calgary, U.L.C., violated FERC's Anti-Manipulation Rule through the manner in which Hunter traded natural gas futures contracts during the settlement period on three dates. The days at issue were February 24, 2006; March 29, 2006; and April 26, 2009. Each day at issue was the last trading day prior to expiration of the subsequent month's futures contract, which is the date when the final price of the futures contract is determined.

In her decision, the ALJ determined that Hunter engaged in fraudulent or deceptive behavior through his sales of futures contracts that were traded on the New York Mercantile Exchange (NYMEX) in the settlement period on each day at issue. As determined by the ALJ, Hunter sold a significant volume of futures contracts during the settlement period (for example, the last 30 minutes of the trading day) of each day. Because Hunter held a short position on futures contracts on other exchanges, the ALJ reasoned that Hunter's sales were undertaken to depress the prices of the futures contract being settled on each day at issue, and therefore were "specifically designed to lower the NYMEX price in order to benefit his swap positions on other exchanges."<sup>3</sup> As a result, the ALJ determined that Hunter violated FERC's Anti-Manipulation Rule by (i) engaging in fraudulent or deceptive behavior, (ii) acting with the requisite scienter, and (iii) acting in connection with the purchase or sale of jurisdictional natural gas.

Although FERC, rather than the ALJ, will determine the sanction applicable to Hunter, the ALJ determined that no mitigating circumstances warrant a reduction of any potential sanction. The ALJ found that Hunter was not forthright with the tribunal throughout the investigation, Hunter's explanations of his conduct amounted to after-the-fact defenses of his actions, and that Hunter was

---

<sup>1</sup> See 18 C.F.R. § 1c.1 (2009).

<sup>2</sup> See *Brian Hunter*, 130 FERC ¶ 63,004 (2010).

<sup>3</sup> *Id.* at P 143.

uncooperative during the investigation. Further, the ALJ found that because Hunter was an executive of his former employer, his conduct warranted close scrutiny.

The ALJ's Initial Decision is notable for several reasons. First, the ALJ's ruling demonstrates an extension of FERC's jurisdiction over a citizen of Canada. Hunter argued that because he is a Canadian citizen, FERC did not possess jurisdiction over him. Relying on precedent from the U.S. Supreme Court, however, the ALJ determined that Hunter had established the requisite minimum contacts with the United States to enable FERC to assert its jurisdiction. Second, the ALJ's decision is the first time that FERC has found an actual violation of its Anti-Manipulation Rule in a contested proceeding. In prior circumstances, FERC has initiated investigations that resulted in settlement agreements resolving manipulation-related allegations, without either party admitting to actual or attempted manipulation. For example, the Amaranth firms that employed Hunter settled with FERC in August 2009. Third, the ALJ's decision determined that although Hunter's trades involved futures contracts, which are within the purview of the Commodity Futures Trading Commission, FERC possessed jurisdiction because Hunter's manipulation of NYMEX futures prices have a significant impact on physical gas transactions, which are within FERC's purview.

The ALJ's Initial Decision is presently pending approval by FERC. Prior to the decision's becoming final, FERC must affirm the ALJ's ruling on the merits. If it affirms the ALJ's ruling, FERC would determine a sanction to apply. However, it is unclear at this time whether FERC will approve the ALJ's ruling on its merits and if so, what sanction FERC would apply.

If you have any questions or would like more information on any of the topics discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

**Washington, D.C.**

Mark. R. Haskell	202.739.5766	<a href="mailto:mhaskell@morganlewis.com">mhaskell@morganlewis.com</a>
George Billinson	202.739.5219	<a href="mailto:gbillinson@morganlewis.com">gbillinson@morganlewis.com</a>
Bryan L. Clark	202.739.5803	<a href="mailto:bryan.clark@morganlewis.com">bryan.clark@morganlewis.com</a>

**About Morgan, Lewis & Bockius LLP**

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—more than 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis or its practices, please visit us online at [www.morganlewis.com](http://www.morganlewis.com).

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states.  
Please note that the prior results discussed in the material do not guarantee similar outcomes.

**© 2010 Morgan, Lewis & Bockius LLP. All Rights Reserved.**