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Panel: Trade Surveillance & Limit Monitoring

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Trade Surveillance: A Primer

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Sophisticated companies trading commodities subject to the jurisdiction of the Commodity Futures Trading Commission (CFTC) and/or the Federal Energy Regulatory Commission (FERC) recognize the importance of developing and implementing an effective compliance program, and trade surveillance is a key component to any effective compliance program.

As both regulators have recognized, there is no one-size-fits-all solution for compliance. Trade surveillance that might be considered insufficient for one market participant (e.g., a registrant or large speculative trader) might be excessive for another market participant (e.g., an end-user or small speculative trading shop).

As such, effective trade surveillance can mean lots of different things to different market participants. For some, it might mean using sophisticated tools to track positions; analyze bids, offers, and trades; and monitor recorded communications. For others, effective trade surveillance might rely on less technical and more human surveillance, such as imbedding individuals responsible for the legal/compliance function in commercial spaces and ensuring their participation in and understanding of all commercial activities.

No One-Size-Fits-All

“Recognizing that each organization has unique characteristics and resources, it is best for an organization to develop its own individualized monitoring plan. However, no matter which monitoring tools an organization decides to implement, it is important that those tools are used routinely and that all potential issues are taken seriously. Moreover, the organization should continually assess the monitoring tools that it utilizes to determine whether they continue to be effective at detecting potential issues.”
(FERC White Paper, p. 14)

When determining the appropriate level of trade surveillance and the most effective tools for trade surveillance, companies should keep in mind two related but distinct objectives: (1) preventing non-compliance and (2) getting credit for efforts to prevent non-compliance in the event of an unavoidable violation. The first should always be the top priority and may lead to unusual and creative solutions to mitigate compliance risks. Attention to the second can lead to exercises that serve as a check to ensure the industry’s best practices have been considered and any decision to deviate from best practices is supported by the idiosyncratic needs or risks of the company.

The exercise of identifying and implementing an effective trade surveillance program is a personal exercise that requires an honest assessment of risks and a thoughtful and practical identification of solutions. To support that personal journey, the purpose of this paper is to highlight practices the CFTC and FERC have either explicitly or implicitly endorsed.

Agency Non-Binding Guidance

Likely the best source of agency guidance regarding trade surveillance comes from a 2016 white paper issued by FERC staff.¹ Although nearly a decade old, this document highlights specific trade surveillance practices FERC staff previously found to be effective “for some organizations.”² The CFTC has not provided this type of explicit guidance regarding effective trade surveillance practices. However, as highlighted below, both the CFTC and FERC have implicitly endorsed similar practices through conditions included in settlement agreements. These include monitoring the following:

- **Position Concentrations.**

FERC staff observed, “[m]onitoring an organization’s trades and position concentrations in particular markets and products can assist compliance personnel in identifying areas in which a trader might have the ability to push a price in a direction that could benefit a related financial position.”³ Staff recommended focusing on specific markets and taking into account differing liquidity and the trader’s ability to influence prices. Staff also recommended tracking financial exposures to identify leveraged positions (i.e., financial positions that are larger than the trader’s exposure in price-setting instruments) for additional security by compliance.⁴

- **Leveraged Positions**

- **Phys/Fin Trading.**

Noting that “trading both physical and financial products at the same or related locations presents a risk of traders engaging in a manipulative scheme that involves both products,” FERC staff recommended organizations “document the locations at which traders trade both physical and financial products and regularly review their trading at those locations to ensure that they are not using the physical trading to benefit a financial position.”⁵ Staff concluded this could be completed “on a sampling basis, using criteria set by compliance to choose the sample, or using automated surveillance tools with alerts and a follow-up process for reviewing those alerts.”⁶ For example, staff recommended compliance review out-of-market transactions (i.e., trades below or above prevailing prices with a high market

¹ FED. ENERGY REG. COMM’N, STAFF, WHITE PAPER ON EFFECTIVE ENERGY TRADING COMPLIANCE PRACTICES (2016) (also available at <https://cms.ferc.gov/sites/default/files/2020-04/tradecompliancewhitepaper.pdf>) (2025) (“FERC White Paper”).

² *Id.* at p. 15.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

concentration).⁷ As part of a settlement to resolve allegations of market manipulation in connection with gas trading during bidweek, FERC extracted a three-year commitment from the respondent to “internally track and review Green Plains’ market concentration, physical positions, and financial positions related to natural gas trading.”⁸

- **Virtual and Financial Trading.**

According to FERC staff, “trading both virtuals and financial products (e.g., financial transmission rights or electric swaps that settle off real-time or day-ahead market locational marginal prices) at the same or related locations presents a risk of traders engaging in a manipulative scheme that involves both products.”⁹ Like the surveillance recommended for physical and financial trading, staff recommended documenting and periodically reviewing trading in related energy markets.¹⁰

- **Asymmetry/Leverage Between Price-Setting and Benefiting Positions.**

Although not addressed in the White Paper, both the CFTC and FERC have taken issue with trader’s activities in price-setting markets while maintaining a leveraged exposure to the resulting price, whether that exposure is created based on financial positions or some other exposure. For example, the CFTC pointed to *physical* exposure to the Los Angeles Bunker Benchmark to identify a motive Glencore allegedly “cherry-picking” participation in the Platts Window to move the published price in a direction that would benefit the price paid or received for the physical cargoes.¹¹

- **Profit and Loss.**

FERC staff also noted “uneconomic or persistent, loss generating trading can be an indicium of manipulation,” and recommended monitoring trading not only for “overall profitability (e.g., aggregated across a portfolio, a time period, locations, or products, etc.)” but also “at a sufficiently granular level to identify misconduct,” such as comparing the profitability between trading in a price-setting product and financial positions. The CFTC has commended compliance conducting in-depth analysis of monthly price reporting and its impact on published index prices and the resulting impact on profit and loss (but

⁷ *Id*

⁸ *Green Plains*, 191 FERC ¶ 61,200 (2025).

⁹ FERC White Paper, p. 15.

¹⁰ *Id*.

¹¹ *In re Glencore Int’l AG*, CFTC No. 22-16, 2022 WL 1963727 (May 24, 2022) (consent order).

criticized management for failing to use the information gleaned to stop conduct the agency subsequently determined was reckless and/or manipulative).¹²

- **Make-Whole or Out-of-Market Payments.**

Noting FERC enforcement related to market participants seeking to increase or receive make-whole or out-of-market payments, FERC staff recommended compliance monitor for the following:

(1) significant changes in the amount of payments received; and

(2) regular or sustained trading which benefits from out-of-market payments.¹³

If such out-of-market payments increase, staff recommend compliance review the circumstances to determine “whether the increased payments resulted from legitimate market conditions, the trading was based on legitimate arbitrage purposes, or if the organization’s traders engaged in conduct that was intended to artificially access or increase the out-of-market payments.”¹⁴

- **Cost-Based Offers.**

FERC staff also noted the risk that market participants use cost-based offers to withhold generation and/or receive or increase out-of-market payments. According to staff, “[t]o monitor for this behavior, compliance personnel should periodically review the organization’s cost-based offers to ensure that they are consistent with the applicable market rules.”¹⁵ Independent market monitors monitor for deviations from anticipated cost-based offers and routinely open inquiries into the formation of cost-based offers; adding controls or alerts when cost-based parameters change (or don’t change) within expected ranges can alert market participants to potential concerns ahead of an inquiry.

- **Pipeline Nominations.**

FERC staff also suggested compliance monitor pipeline nominations “to identify whether nominations made on behalf of the organization were not intended to flow, but, instead, were intended to take advantage of the system, such as to increase pro-rata allocation of capacity during periods of excess nominations or perform uneconomic backhauls.”¹⁶ It

¹² *In the Matter of: Total Gas & Power North America, Inc. and Therese Tran*, Docket No. 16-03 (Dec. 7, 2015) (fining respondent \$3.6 million for manipulating natural gas prices).

¹³ FERC White Paper, p. 16.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 17.

suggested such reviews could occur after constrained periods. Although FERC has provided no clear insight into this line of surveillance, the Commission.¹⁷

- **Communications Surveillance.**

With respect to communications, FERC staff recommended (for organizations that record and retain trader communications for compliance purposes) the following: (1) requiring traders to only use approved channels of communication (“i.e., prohibit traders from engaging in work-related discussion on personal devices”); “(2) recording all incoming and outgoing emails, instant messages, and calls; and (3) retaining those recordings for at least five years from the date of their creation.”

Staff went on to observe, “[o]rganizations that record and retain trader communications should regularly review those communications to identify any potential issues or indicators of misconduct,” and noted “there are a variety of algorithmic-based software programs that are able to screen communications and flag those that require additional review” and frequently update the program.¹⁸

- **Employee Questions and Concerns.**

FERC staff also recognized anonymous reporting channels (e.g., email portals or hotlines) as an important surveillance tool and encouraged fostering an environment in which employees feel comfortable discussing compliance questions and reporting potential violations without fear of retribution. Such a culture of compliance can be supported through compliance training and regular (e.g., quarterly) compliance meetings and inclusion of compliance in risk committee meetings. These practices again were implicitly endorsed by FERC in its settlement with Green Plains.¹⁹

Agency Guidance by Example

While the agencies have shared limited details about their own surveillance practices, market participants can still draw insights from publicly known elements — such as the agencies’ use of trade data analysis after the fact — to help shape their own proactive surveillance strategies.

For example, both agencies routinely describe trading in price-setting markets, particularly uneconomic or “aggressive” trading in price-setting windows, while holding leveraged (larger) passive positions in products that benefit from price movements caused in the price-setting market. This has been the basis for nearly every CFTC case alleging market manipulation and has been

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Green Plains*, 191 FERC ¶ 61,200, at P. 21 (2025) (“Green Plains will conduct FERC-specific natural gas trading compliance training annually for all trading desk and risk management personnel with external experts and/or outside counsel. Green Plains will conduct quarterly natural gas trading compliance meetings and will include natural gas trading compliance in risk committee meetings”).

described repeatedly by FERC staff in FERC’s Annual Reports on Enforcement (Docket No. AD07-13) as a screen used to identify potential manipulation.²⁰

Without providing details regarding the specific behaviors that will be tracked, the CFTC also announced its use of Nasdaq’s Market Surveillance platform, which generally uses order feed data to identify changes in behavior such as changes in market concentration, order placement, and order amendments or cancellations.²¹

Implementation of Proactive Surveillance

Considering the trading patterns at the heart of CFTC and FERC enforcement, an effective trade surveillance program should (i) enable the compliance function to identify positions that might incentivize traders to create artificial prices and (ii) alert compliance to changes in trading activity (particularly in price-setting markets) that could trigger scrutiny under the agencies’ respective anti-manipulation rules, FERC’s Market Behavior Rules, and/or the CFTC’s disruptive trading practices. These two avenues approach the issue from separate directions: recognizing related positions can position compliance to identify *in advance* trading patterns that might create a motive to manipulate (or perceived motive), while monitoring changes in behavior in price-setting markets (particularly where related positions have been identified) can help compliance complete the picture, inquire into anomalies, and anticipate inquiries from regulators.

While the agencies’ real-time surveillance necessarily focuses substantially on order flow and *ex post* analysis of trading in price-setting markets (due to their lack of real-time insight into certain physical and over-the-counter positions), market participants have the benefit of real-time insights into their net exposure to market prices and may have an advantage for forecasting areas for heightened scrutiny. By looking at price exposure *ex ante*, market participants can see potential problems on the horizon and potentially avoid – or at least prepare for – allegations and investigation after-the-fact.

Conclusion

Realizing there is no one-size-fits-all for compliance, each market participant is left to undertake an assessment of its own unique compliance risks and identify effective trade surveillance measures to mitigate those risks through detection and prevention. To increase the chance of getting credit for efforts to prevent non-compliance, market participants should document their assessment and consider explaining the choices made with respect to trade surveillance.

²⁰ See e.g. *In re Opyin, Inc.*, CFTC Docket No. 23-40 (Sept. 7, 2023); *In the Matter of Universal Navigation Inc. d/b/a Uniswap Labs*, CFTC Docket No. 24-25 (Sept. 4, 2024); 2024 Report on Enforcement, Docket No. AD07-13-018 (Nov. 21, 2024) (describing screens that led to inquiries closed without enforcement).

²¹ “CFTC Enhances Market Oversight with Advanced Surveillance Technology Platform” (Aug. 27, 2025). <https://www.cftc.gov/PressRoom/PressReleases/9110-25>.

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