

Energy Markets Investigations & Enforcement: How inquiries arise, how regulators investigate, and what actually matters in response

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This presentation is part of the Trading Law Primer Series, a practical training sequence on legal, regulatory, and enforcement issues affecting physical and financial energy markets.

This module examines how investigations arise, how regulators gather and interpret evidence, and how many market participants choose to respond in the early stages of an inquiry.

TRADING LAW SERIES



How to Use This Session

- This seminar is designed for various audiences
- Participants new to energy markets, an introduction: focus on structure, regulator mindset, and vocabulary
- Mid-level and senior legal/risk professionals, a refresher: focus on enforcement framing and escalation triggers
- For all participants: goal is shared vocabulary and deeper understanding
- Facilitating better decision-making



Energy Market Terms Used in This Session

- Physical markets: production, transportation, storage, and delivery obligations
- Financial markets: futures, swaps, and options referencing physical prices
- Scheduling/nominations: instructions that control physical flows
- Benchmarks: published prices used to settle financial contracts
- Reliability: system stability and operability, not merely uptime



For additional terms, see commonly-used terms document in Trading Law Primer Series

MARKET STRUCTURE & REGULATORY RISK



Why Energy Markets Are Different

- Physical and financial markets are tightly interconnected
- Operational decisions can influence prices and benchmarks
- Regulators focus on market impact, not trading intent
- Good faith conduct can still create enforcement exposure
- Regulators analyze conduct holistically across desks



Broad Interconnectedness

- Multiple agencies assert overlapping jurisdiction
- Jurisdiction follows statutes, not market reality
- Parallel investigations are common and expected
- Sharing of Information across agencies and internationally



THE FEDS – WHO IS WATCHING



Primary Federal Regulators

- FERC: physical power and gas markets, reliability, price formation
- CFTC: derivatives trading, market integrity, fraud and manipulation
- FTC: Wholesale petroleum and products sales
- DOJ / FTC: antitrust, fraud, and criminal exposure





Mission:

- Regulate interstate electricity, natural gas, and oil markets to ensure fair, reliable, and efficient energy services.

Key Enforcement Responsibilities:

- **Fraud & Market Manipulation:** Investigate and penalize deceptive practices in energy markets.
- **Anticompetitive Conduct:** Address anti-competitive behavior affecting energy markets.
- **Reliability Standards Violations:** Enforce compliance with electric reliability standards.
- **Infrastructure Threats:** Respond to threats impacting energy infrastructure and the environment.
- **Market Transparency:** Ensure transparency in regulated markets.

Enforcement Tools:

- **Civil Penalties:** Impose fines for violations.
- **Disgorgement:** Require return of unjust profits.
- **Compliance Commitments:** Mandate corrective actions.
- **Investigations & Audits:** Conduct thorough reviews of market behavior and participant compliance.





Mission:

- Oversee U.S. derivatives markets, including futures, options, and swaps, to promote market integrity and protect investors.

Key Enforcement Responsibilities:

- **Market Manipulation:** Investigate and penalize manipulative trading practices.
- **Fraudulent Activities: Anticompetitive Conduct:** Address fraud in commodity trading.
- **Disruptive Trading Practices:** Combat disruptive trading behaviors.
- **Registration Violations:** Enforce compliance with registration requirements for market participants.

Enforcement Tools:

- **Civil Penalties:** Impose fines for violations.
- **Injunctive Relief:** Seek court orders to prevent future violations.
- **Whistleblower Program:** Offer monetary rewards for information leading to successful enforcement actions.



FTC

Mission:

- Protect consumers and promote competition by preventing unfair, deceptive, and anticompetitive business practices.

Key Enforcement Responsibilities:

- **Consumer Protection:** Address fraud, deception, and unfair practices affecting consumers.
- **Antitrust Enforcement:** Prevent anticompetitive mergers and business practices.
- **Rulemaking:** Develop and enforce rules to protect consumers and ensure market fairness.
- **Wholesale Petroleum Markets:** Prevent manipulative and deceptive behavior in the wholesale crude oil, petroleum products and distillates.

Enforcement Tools:

- **Civil Penalties:** Impose fines for violations.
- **Injunctive Relief:** Seek court orders to prevent future violations.
- **Order Monitoring:** Ensure compliance with administrative and federal court orders.
- **Criminal Liaison:** Coordinate with criminal law enforcement agencies for prosecution of severe violations.

To date, FTC has never brought an independent prosecution under the Energy Independence And Security Act authority over crude oil and products. Instead, acts under its unfair practices authority or antitrust guidelines with respect to mergers



Exchanges as Front-Line Regulators

- Independent rulebooks and broad enforcement discretion
 - Some rules are specific (e.g., block trade rules), others are catch-all or reflect principles (e.g., prohibition of acts detrimental to the interests of the exchange)
 - Must know the exchange-specific rules of any exchange on which you trade
 - NYMEX Rulebook, ICE Rules
 - E.g., exchange-specific rules on trading practices, position limits, etc.
- **Penalty Authority up to \$1 million per violation**
- More informal investigation rules
- Anticipate violations to include “soft” violations
 - E.g., failure-to-supervise trader and/or behavior detrimental to the interest of the exchange theories
- Exchange inquiries often precede or coincide with federal investigations
- Violation of exchange rules may also violate CFTC rules



REGULATION OF COMMODITY MARKETS

- Commodities operations subject to numerous regulators and rules
 - Multiple jurisdictions
 - Multiple agencies
 - Multiple exchanges
- Prohibited behavior can violate rules of multiple regulators
- Some regulatory agencies have executed memoranda of understanding
 - Provides the framework for how agencies will work with one another
- You may not engage in behavior or activities that:
 - Abuse or manipulate the market
 - Misuse information
 - Violate agency or exchange rules
 - Attempt to do any of the above
- All trades must have a legitimate business purpose
- Assume that information provided to one regulator will be shared with other in the context of an investigation



Enforcement

- FERC, CFTC and FTC regulate different markets
 - Oversimplified: Physical gas, power, and FTRs (FERC) vs futures, swaps, and options (CFTC) vs. physical wholesale oil (FTC)
- BUT, they have potentially overlapping jurisdiction
 - Which each may pursue
 - Separate actions, each with potential for separate penalties
- FERC, CFTC and FTC Penalty Authority
 - Civil penalty authority of \$1 million per day, per violation
 - Equitable remedies (e.g., disgorgement)
 - Possibility of referrals for criminal enforcement
- Reputational effects
- Legal costs associated with investigation
- The foregoing is in addition to other generally applicable federal and state law
 - E.g., antitrust, environmental, unfair competition, deceptive practices, FCPA
 - *Qui tam* actions
 - Negligence or tort based actions



Know what to do when that knock at the door comes

INVESTIGATIONS



How Investigations Actually Start

- WHAT?
 - Artificial prices and false market signals
 - Misuse of information
 - Market confidence and system reliability
- WHO?
 - Agency
 - Complaints from counterparties or whistleblowers
 - Internal or former employee reports
 - Federal incentive programs increase reporting and referrals
- HOW?
 - Market surveillance and pattern detection
 - Patterns across time or products raise concern



What Regulators Look for First

- Observable market impact
- Price movement
- Benchmark distortion
- Reliability or congestion effects
- Regulatory focus areas receive heightened scrutiny
- Repeated conduct suggests weak controls or intent
- Unchanged systems increase recurrence risk



Documentation/Communication Discipline Matters

- Lack of contemporaneous rationale increases exposure
 - Contemporaneous documentation is critical
 - Post hoc explanations are discounted
- Clear data and communications increase enforceability
 - Emails and chat messages are primary evidence sources
 - Informal language is often misinterpreted, creates outsized risk
 - Early explanations, consistent with data and emails often anchor regulator perceptions
- Consistency reduces perceived intent
 - Inconsistent narratives increase suspicion



Escalation Risk Factors

- Is this behavior a current regulatory focus area (algorithms or automated trading activity)?
- Do the patterns/does the behavior span multiple products or time periods?
- Was the conduct isolated or repeated?
- Is the conduct ongoing without modification?
- How strong were the control processes in place?
- Did the control/risk systems change after issues arise?
- Could the conduct materially affect the market?
- Can the case be proved efficiently?



The First 72 Hours Matter Most

- Immediate response often determines investigation trajectory
- DON'Ts
 - Early missteps compound quickly
 - Delayed or fragmented responses raise suspicion
 - Disorganized messaging undermines credibility
 - Internal coordination failures increase exposure
 - Do not speculate or guess facts
 - Avoid informal or side-channel communications
- DO's
 - Immediate document preservation
 - Include emails, chats, personal devices, and third-party platforms
 - Begin scope clarification early
 - Centralize internal and external communications
 - Avoid speculative or evolving explanations



INTERNAL INVESTIGATIONS



When an Internal Investigation Is Warranted

- Credible indicators of potential misconduct
 - Surveillance alerts suggesting anomalous trading or patterns
 - Counterparty complaints or exchange inquiries
 - Whistleblower reports (internal or external)
- Regulatory contact or credible threat of inquiry
 - Informal data requests
 - Preservation notices
 - ISO/RTO or exchange referrals
- Repeated or systemic issues
 - Similar conduct across time, products, or desks
 - Prior issues without documented remediation
- Materiality considerations
 - Potential market impact, benchmark effects, or reliability implications
 - Conduct in regulatory focus areas



Objectives of an Internal Investigation

- Determine facts, not assign blame
 - What happened
 - When it happened
 - Who was involved
 - How systems and controls functioned
- Assess regulatory and legal exposure
 - Anti-manipulation or fraud risk
 - Disclosure and remediation obligations
- Preserve credibility with regulators
 - Demonstrate seriousness, independence, and control
- Enable informed decision-making
 - Self-reporting
 - Remediation
 - Personnel or control changes



Structuring the Investigation

- Define scope narrowly at the outset
 - Products, time period, personnel, and systems
 - Avoid silent scope expansion
- Establish independence and privilege
 - Legal oversight from inception
 - Clear investigation mandate
- Identify data sources early
 - Trading records, bids/offers, congestion outcomes
 - Emails, chats, recorded calls, personal devices where applicable
- Coordinate with compliance, risk, and IT
 - Ensure preservation and data integrity
 - Avoid parallel fact-gathering that fragments narratives



Conducting the Investigation Effectively

- Prioritize contemporaneous evidence
 - Trading data and communications over recollections
- Interview strategically
 - Begin with context-setting witnesses
 - Preserve credibility and consistency
- Test explanations against data
 - Do not accept desk narratives at face value
 - Reconcile intent with outcomes
- Document investigative steps
 - What was reviewed
 - Why conclusions were reached
 - What uncertainties remain



Using Investigation Results

- Inform regulatory strategy
 - Engagement posture
 - Timing and framing of disclosures
- Drive remediation
 - Control enhancements
 - Policy or system changes
 - Training and supervision
- Protect the organization and individuals
 - Clear factual record reduces adverse inference
 - Demonstrates good faith and governance
- Avoid overreach
 - Investigations should be proportionate
 - Overbroad reviews can create unnecessary exposure



PUTTING THE CONCEPTS TOGETHER



From Trading to Enforcement Risk (Illustrative)

- Trading strategy designed to hedge congestion or supply exposure
- Operational actions coincided with tight system conditions
- Market prices moved during the execution window
- Internal communications lacked clear contemporaneous rationale
- Conduct reviewed through multiple regulatory lenses
- Outcome depends heavily on documentation, controls, and early response



Questions?



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**Desk-aware legal support with actionable advice
from someone who's been next to you when it
actually matters and decisions can't wait.**

