

135 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Brian Hunter

Docket No. IN07-26-004

ORDER AFFIRMING INITIAL DECISION AND ORDERING
PAYMENT OF CIVIL PENALTY

(Issued April 21, 2011)

1. This case is before the Commission on exceptions to the Initial Decision issued by the Presiding Administrative Law Judge (ALJ) on January 22, 2010.¹ It represents the first fully-litigated proceeding involving the Commission's enhanced enforcement authority under § 4A of the Natural Gas Act, added by the Energy Policy Act of 2005, which prohibits manipulation in connection with transactions subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC).²

2. The Commission implemented this broad statutory authority in a series of orders and policy statements, commencing with the adoption of the Anti-Manipulation Rule, 18 C.F.R. § 1c.1 in Order No. 670, *Prohibition of Energy Market Manipulation*.³ Through these orders and policy statements, the Commission addressed the manner in which it would exercise its authority in determining when market manipulation takes place, and the remedies available to punish any such manipulation.

3. In the Initial Decision, the ALJ determined that Respondent Brian Hunter (Hunter) violated the Anti-Manipulation Rule. The Commission affirms that decision. The record shows that Hunter's trading practices during the at-issue expiration days were fraudulent

¹ *Brian Hunter*, 130 FERC ¶ 63,004 (2010) (Initial Decision).

² 15 U.S.C. § 717c-1.

³ 114 FERC ¶ 61,047, *order denying reh'g*, 114 FERC ¶ 61,300 (2006) (Order No. 670). *See also Policy Statement on Enforcement*, 113 FERC ¶ 61,068 (2005) (Enforcement Policy Statement); *Revised Policy Statement on Enforcement*, 123 FERC ¶ 61,156 (2008) (Revised Enforcement Policy Statement).

or deceptive, undertaken with the requisite scienter, and carried out in connection with FERC-jurisdictional natural gas transactions. The Commission has determined that a civil penalty in the amount of \$30,000,000 is appropriate in this case.

I. Overview

4. Section 4A of the Natural Gas Act makes it unlawful for “any entity” to utilize any “manipulative device or contrivance” “in connection with” FERC-jurisdictional transactions:

It shall be unlawful for any entity, directly or indirectly, to use or employ, in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance (as those terms are used in section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) in contravention of such rules and regulations as the Commission may prescribe as necessary in the public interest or for the protection of natural gas ratepayers.

15 U.S.C. § 717c-1.

5. The Commission implemented Natural Gas Act § 4A through the adoption of the Anti-Manipulation Rule, which provides in relevant part:

(a) It shall be unlawful for any entity, directly or indirectly, in connection with the purchase or sale of natural gas or the purchase or sale of transportation services subject to the jurisdiction of the Commission,

- (1) To use or employ any device, scheme, or artifice to defraud,
- (2) To make 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
- (3) To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any entity.

18 C.F.R. § 1c.1.

6. This case concerns the alleged manipulation of the price of Commission-jurisdictional transactions by Hunter – the lead natural gas trader for Amaranth,⁴ a hedge fund headquartered in Greenwich, Connecticut – through trading in natural gas futures contracts (NG Futures Contracts), in a manner that was designed to produce artificial settlement prices for these contracts so as to reap a profit on related financial instruments.

The Futures And Swap Markets

7. NG Futures Contracts are standardized agreements to purchase or sell a volume of natural gas in the future at a pre-determined price. They are bought and sold on the New York Mercantile Exchange (NYMEX). The seller of futures contracts is said to have a “short position” because the seller hopes that the price of natural gas will drop before the delivery date. The buyer, who holds a “long position,” benefits if the price rises. Because NG Futures Contracts are standardized except for price and delivery date, a party holding one position on a futures contract may cancel its obligation to physically deliver or accept the natural gas by acquiring an equal and opposite position in a corresponding contract, thereby attaining a “flat position.”⁵

8. The standardized terms in NG Futures Contracts specify the delivery of 10,000 MMBtus of natural gas at the Henry Hub in Louisiana in the month in which the contract matures. Contracts cease trading on the “expiration day,” which is the third to last business day of the month prior to which delivery must be made on open contracts (referred to as the “prompt month”).⁶ The settlement price of an NG Futures Contract is the volume-weighted average price of trades during the “settlement period,” which is the last thirty minutes of trading on the expiration day (from 2:00 p.m. to 2:30 p.m.). Net contract positions left open at end of the expiration day are said to “go to delivery” – i.e., are settled through physical delivery. Parties holding a short position must make delivery of 10,000 MMBtus of natural gas at the Henry Hub to their counterparties who hold the corresponding long position.

⁴ “Amaranth” refers collectively to Amaranth Advisors, L.L.C., Amaranth LLC, Amaranth Management Limited Partnership, Amaranth International Limited, Amaranth Partners LLC, Amaranth Capital Partners LLC, Amaranth Group Inc., and Amaranth Advisors (Calgary) ULC. For a description of the interrelationship between the various Amaranth entities, see *Amaranth Advisors, L.L.C.*, 120 FERC ¶ 61,085, at P 28-34 (2007) (Order to Show Cause).

⁵ Initial Decision at P 58-59.

⁶ Initial Decision at P 58. On expiration days, the settlement period for non-prompt month contracts is the final two minutes of trading (from 2:28 p.m. to 2:30 p.m.).

9. Traders may also enter into swaps, which are financial instruments exchanged in commercial markets, such as the Intercontinental Exchange (ICE) or the Clearport trading platforms. Natural gas swaps operate much like NG Futures Contracts, except that they do not have a physical delivery component. A buyer of a swap agrees to pay a “fixed” price and the seller agrees to pay a “floating” price, which will be the final settlement price of the NG Futures Contracts. The buyer benefits if the price of natural gas rises (the long position), and the seller benefits if the price falls (the short position).⁷

10. Option contracts are also traded in financial markets. The buyer of a “call” option buys the right to purchase a NG Futures Contract on the expiration date of that contract or a natural gas swap contract at a pre-determined “strike” price. The buyer of a “put” option purchases the right to sell a futures contract or swap contract at the strike price.⁸

Hunter’s Manipulative Scheme

11. In this case, the Order to Show Cause alleged that Hunter engaged in a scheme to manipulate the prices for NG Futures Contracts on NYMEX. The scheme included the accumulation of large amounts of NG Futures Contracts that were then sold off during the settlement periods on the expiration days in February, March, and April 2006, with the aim of driving down the settlement price. Hunter’s trading pattern was intended to benefit the significantly larger short positions maintained by Amaranth in natural gas swaps, whose value increased as the NG Futures Contract settlement price declined. The record reveals the following:

12. On the morning of February 24, 2006, the expiration day for the March 2006 NG Futures Contracts, Amaranth had a short position in 1,729 March 2006 NG Futures Contracts.⁹ Although Amaranth’s practice was to flatten futures positions prior to the settlement period,¹⁰ Hunter told his execution trader to make sure he had “lots of futures to sell MoC [Market on Close].”¹¹ In accordance with this instruction, Amaranth proceeded to purchase futures contracts until it held a long position in more than 3,000

⁷ Initial Decision at P 54 n.35; *see also* Order to Show Cause at P 18 (describing swap transactions).

⁸ *See* Order to Show Cause at P 19.

⁹ Initial Decision at P 62.

¹⁰ Initial Decision at P 148.

¹¹ A “market on close” order is an order to sell during the close of the trading session. Initial Decision at P 147 n.68.

March 2006 NG Futures Contracts.¹² At the same time, Amaranth increased its short position in natural gas swaps from 11,943 to 14,005.¹³

13. While Amaranth was amassing these contracts, Hunter sent an instant message to a fellow Amaranth trader, stating that the price of the March 2006 NG Futures Contracts needed “to get smashed on settle” – i.e., fall quickly – “then day is done.”¹⁴ He described his trading strategy as a “bit of an exp[er]iment mainly.”¹⁵ To that end, Amaranth sold close to 3,000 March 2006 NG Futures Contracts in the thirty-minute settlement period, which amounted to 19.4 percent of the market volume in that interval. During that period, the price fell from nearly \$7.45 per MMBtu to less than \$7.00, before settling at a volume-weighted average price of \$7.11.¹⁶ Hunter concluded in an instant message to an Amaranth trader that “Today came together quite nicely.”¹⁷

14. This trading pattern repeated itself on March 29, 2006, the expiration day for April 2006 NG Futures Contracts. At the start of the day, Amaranth had a long position in 1,603 April 2006 NG Futures Contracts, and was short roughly 15,000 natural gas swaps. Amaranth sold 1,300 April 2006 NG Futures Contracts in the last thirty minutes of trading on March 29, accounting for 15.0 percent of the market volume during the settlement period. The price fell from approximately \$7.30 to \$7.18, before settling at a volume-weighted average price of \$7.23.¹⁸

15. By April 26, 2006, the expiration day for May 2006 NG Futures Contracts, Amaranth had again accumulated a long position in 3,044 future contracts. Throughout the day, Amaranth increased its short position in natural gas swaps from 5,570 to 16,902, while also holding a significant short position for June 2006 NG Futures Contracts and a

¹² Initial Decision at P 63.

¹³ Initial Decision at P 62. In order to garner a profit, Hunter’s swap positions needed to be substantially larger than his positions in NG Futures Contracts. The cost of selling futures contracts at low prices is fully borne by the seller, whereas the corresponding gains on the short swap positions are diluted because they are derived from the weighted average price of NG Futures Contracts trades during the settlement period. *Id.* P 72.

¹⁴ Initial Decision at P 146 (citing Ex. S-45, Tr. 281-82 (Hunter)).

¹⁵ Initial Decision at P 149 (citing Ex. S-45, Tr. 425 (Hunter)).

¹⁶ Initial Decision at P 64, 73.

¹⁷ Initial Decision at P 149 (citing Ex. S-55; Tr. 432-33 (Hunter)).

¹⁸ Initial Decision at P 65-67, 73.

net 17,590 long position in June put options, which was the equivalent of carrying a short position in swaps.¹⁹ During the settlement period, Amaranth sold approximately 2,600 May 2006 NG Futures Contracts (14.4 percent of trading volume), with specific instructions that they be sold in the last eight minutes of trading. At the start of the settlement period, the May 2006 NG Futures Contract price rose to nearly \$7.27, before falling below \$7.10 during the later stages of the period. Ultimately, the volume-weighted average settlement price was \$7.20.²⁰

Impact on FERC-Jurisdictional Markets

16. After extensive hearings, the ALJ determined that the preponderance of the evidence demonstrated that Hunter intentionally manipulated the settlement prices of NG Futures Contracts on NYMEX during the months in question in order to benefit his swap and option positions on other trading platforms.²¹ Given the close relationship between the financial and physical natural gas markets – a relationship about which Hunter was aware – this manipulation affected the price of FERC-jurisdictional physical natural gas transactions in a number of ways.

17. First, in accordance with NYMEX rules, the settlement price served as the basis for pricing those NG Futures Contracts that actually went to physical delivery. Second, the settlement price is the largest, or even sole, price component in “physical basis” transactions, which are widely used for monthly physical delivery in North America. Third, several monthly price indices – which are widely used in bilateral natural gas markets as a price term – are calculated based on the average price of fixed-price and/or physical basis transactions.²²

II. Procedural History

18. On July 26, 2007, the Commission issued the Order to Show Cause, which commenced an enforcement action against Amaranth, and two of its traders, Hunter and Matthew Donohoe (Donohoe), and directed them to show cause why they had not violated the Anti-Manipulation Rule.

¹⁹ As the ALJ explained, put options become more valuable as the underlying instrument price falls. *See* Initial Decision at P 67.

²⁰ Initial Decision at P 68-69, 173-74.

²¹ *See, e.g.*, Initial Decision at P 84, 165, 191.

²² Initial Decision at P 205-08.

19. In a rehearing order issued November 30, 2007, the Commission rejected the contention that the Commodity Futures Trading Commission (CFTC) has exclusive jurisdiction that precluded FERC jurisdiction and this enforcement action. The Commission explained that, while it does not directly regulate NG Futures Contracts, the settlement price of such contracts directly affects the price of FERC-jurisdictional natural gas sales. As a result, the Commission found that the alleged conduct fell within § 4A's broad prohibition of manipulation "in connection with" FERC-jurisdictional sales. The exercise of such jurisdiction complements, rather than interferes with, the CFTC's overlapping jurisdiction.²³

20. On December 14, 2007, Respondents filed their answers to the Order to Show Cause, as well as motions for summary disposition. Respondents denied all allegations and again argued that the Commission lacked jurisdiction to pursue an enforcement action against them.

21. In an order issued July 17, 2008, the Commission denied all motions for stay and summary disposition, as well as certain motions for rehearing not previously addressed. The Commission also set the proceeding for hearing before an ALJ to address the allegations in the Order to Show Cause, and reserved for itself the issue of whether civil penalties should be imposed.²⁴ In an order issued January 15, 2010, the Commission denied Hunter's request for rehearing of the Hearing Order.²⁵

22. Respondents and the Commission's Enforcement Litigation Staff engaged in settlement negotiations during this proceeding. On November 24, 2008, the parties filed an offer of settlement, which the Commission rejected by order dated February 12, 2009.²⁶ On July 23, 2009, Amaranth and Donohoe, on the one hand, and Enforcement Litigation Staff, on the other, filed another offer of settlement. The Commission approved the settlement in an order issued August 12, 2009.²⁷

23. The hearing as to the claims against Hunter, the sole remaining Respondent, commenced on August 18, 2009 and concluded on September 2, 2009. The parties filed

²³ *Amaranth Advisors L.L.C.*, 121 FERC ¶ 61,224, at P 11, 23 (2007) (2007 Rehearing Order).

²⁴ *Amaranth Advisors, L.L.C.*, 124 FERC ¶ 61,050 (2008) (Hearing Order).

²⁵ *Brian Hunter*, 130 FERC ¶ 61,030 (2010) (2010 Rehearing Order).

²⁶ *Amaranth Advisors L.L.C.*, 126 FERC ¶ 61,112 (2009).

²⁷ *Amaranth Advisors L.L.C.*, 128 FERC ¶ 61,154 (2009).

initial briefs on October 13, 2009, and reply briefs on October 26, 2009. The ALJ issued the Initial Decision on January 22, 2010.

24. On March 4, 2010, Hunter filed a Brief on Exceptions to the Initial Decision, and Enforcement Litigation Staff filed a memorandum addressing penalty issues. On March 24, 2010, Hunter filed a response to Enforcement Litigation Staff's penalty memorandum and Enforcement Litigation Staff filed a brief opposing Hunter's exceptions.

III. Discussion

A. Personal Jurisdiction

25. The ALJ found that Enforcement Litigation Staff met its burden of demonstrating that Hunter had sufficient contacts with the United States to justify the Commission's exercise of personal jurisdiction. The ALJ determined that, although Hunter resided in Canada during the events in question, it was appropriate to assert specific jurisdiction over him because, *inter alia*, he (1) traded natural gas instruments on the NYMEX, located in New York City, (2) communicated by telephone, email and instant messages with Amaranth headquarters in Greenwich, Connecticut, and (3) traveled to Connecticut to attend meetings in connection with his employment at Amaranth.²⁸ The ALJ also found that it would be appropriate to assert general jurisdiction over Hunter in light of his continuous and systematic contacts with the United States since 2001. In this regard, the ALJ found that Hunter (1) worked for Deutsche Bank and Amaranth in New York City from 2001-2005, (2) maintained a United States mailing address after moving to Canada in 2005, (3) repeatedly travelled to the United States during 2005-2007, and (4) availed himself of the New York court system by filing suit against his former employer, Deutsche Bank, in 2004.²⁹

26. On exceptions, Hunter does not dispute these facts. He simply asserts, in a footnote, that the evidence did not establish that he had sufficient contacts with the United States such that the exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice.³⁰ The Commission disagrees.

27. The evidence adduced at the hearing and cited by the ALJ amply supports the Commission's exercise of personal jurisdiction over Hunter. In particular, the alleged

²⁸ Initial Decision at P 20-21 (citing Tr. 287-90 (Hunter)).

²⁹ Initial Decision at P 22-23 (citing Tr. 284, 287-88, 209-92, 295-97 (Hunter), Exs. S-210, S-222).

³⁰ Brief on Exceptions at 78 n.43.

manipulation arose out of trades executed (or directed) by Hunter on the NYMEX in New York City. Such conduct constitutes transacting business within the United States, albeit through communications taking place, in part, outside the country. In such circumstances, the exercise of personal jurisdiction over Hunter comports with due process.³¹ Our conclusion in this regard is further buttressed by the fact that in a parallel case brought by the CFTC, the United States District Court for the Southern District of New York found that substantially similar conduct permitted it to assert personal jurisdiction over Hunter. *CFTC v. Amaranth Advisors, L.L.C.*, 554 F. Supp. 523, 530 (S.D.N.Y. 2008).

B. Standard and Burden of Proof; Review of Initial Decisions

28. On exceptions, Hunter argues repeatedly that the ALJ applied the incorrect standard of proof and shifted the burden of proof to him.³² The Commission disagrees with both assertions.

29. The ALJ, consistent with § 7(c) of the Administrative Procedure Act, 5 U.S.C. § 556(d), placed the burden of proof upon Enforcement Litigation Staff³³ and held that it could be satisfied by a “preponderance of the evidence.”³⁴ Such a standard is consistent with the Supreme Court’s pronouncements regarding the proper standard of proof for proceedings of this type.³⁵ A preponderance standard requires the party with the burden

³¹ See, e.g., *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1984) (“it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted”); *In re Natural Gas Commodity Litig.*, 337 F. Supp. 2d 498 (S.D.N.Y. 2004) (finding personal jurisdiction where out of state acts were conducted “with the purpose of manipulating the market for natural gas futures on the New York Mercantile Exchange”); *SEC v. Alexander*, No. 00 Civ. 7290 (LTS), 2003 U.S. Dist. LEXIS 8504, at *7-9 (S.D.N.Y. 2003) (finding personal jurisdiction over a Greek citizen residing in Greece who carried out his trades on the New York Stock Exchange from Greece by telephone through a Greek brokerage firm).

³² See, e.g., Brief on Exceptions at 35, 41, 55, 61 n.30, 66.

³³ Initial Decision at P 215 (“In this case Enforcement Staff has met its burden of proof”).

³⁴ Initial Decision at P 54 n.33.

³⁵ *Steadman v. SEC*, 450 U.S. 91, 96 (1981) (upholding use of preponderance of the evidence standard in SEC proceeding alleging violations of antifraud provisions).

of proof to establish that it is “more likely than not” that the respondent committed the alleged violation.³⁶

30. The ALJ did not improperly shift the burden of proof to Hunter. Rather the burden of proof was placed upon Enforcement Litigation Staff.³⁷ Once Enforcement Litigation Staff presented evidence relating to a violation of the Anti-Manipulation Rule, both parties appropriately put forward testimony and documentary evidence.³⁸ The Initial Decision reflects the back-and-forth nature of the litigation process, along with the arguments presented in pre- and post-hearing briefing. Based upon that analysis, the ALJ concluded that Enforcement Staff had met its burden of proving, by a preponderance of the evidence, that Hunter violated the Anti-Manipulation Rule.

31. As the trier of fact, the ALJ is in the best position to evaluate testimony and other evidence. The Commission therefore generally affords deference to the ALJ’s credibility determinations and the amount of weight to be given to particular testimony or documentary evidence.³⁹ This is particularly true with respect to such “elusive factors as

³⁶ *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 (1983). See also *Tellabs, Inc. v. Makor Issues & Rights*, 551 U.S. 308, 329 (2007) (under a preponderance standard, the moving party “must demonstrate that it is more likely than not the defendant acted with scienter”); *Ostrowski v. Atlantic Mut. Ins. Cos.*, 968 F.2d 171, 187 (2d Cir. 1992) (a “fact has been proven by a preponderance of the evidence if ... the scales tip, however slightly, in favor of the party with the burden of proof”) (internal quotations omitted).

³⁷ See, e.g., Initial Decision at P 215.

³⁸ See, e.g., *In re Donald T. Sheldon*, No. 3-6626, 1992 SEC LEXIS 3052, at *46 (1992) (holding that the Administrative Procedure Act “expressly places the burden of proof – that is the burden of presenting some evidence – on the proponent of an issue, in this case the Division with respect to the excessiveness of markups. Once the Division presented evidence of these markups, the burden shifted to Reid to refute that evidence”). See also *Director, Office of Workers’ Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 273 (1993) (quoting *Powers v. Russell*, 30 Mass. 69, 76 (1833)) (“Though the burden of proving the fact remains where it started, once the party with this burden establishes a prima facie case, the burden to ‘produce evidence’ shifts.”); *In re Ribozyme Pharma. Inc. Sec. Litig.*, 209 F. Supp. 2d 1106, 1112 (D. Colo. 2002) (“Plaintiffs set forth sufficient evidence to establish each of the foregoing elements, establishing a prima facie violation of Rule 10(b)(5). Accordingly, the burden shifted to the Defendants to establish a genuine factual dispute as to one or more of the elements.”).

³⁹ *Entergy Services, Inc.*, 130 FERC ¶ 61,023, at P 53 n.66 (2010); *El Paso Natural Gas Co.*, 67 FERC ¶ 61,327, at 62,156 (1994). See also *Penasquitos Village, Inc. v. NLRB*, 565 F.2d 1074, 1078-79 (9th Cir. 1977) (“Weight is given the administrative law

(continued...)

motive or intent,” which invariably ““hinge entirely upon the degree of credibility to be accorded the testimony of interested witnesses.””⁴⁰

C. Violation of the Anti-Manipulation Rule

32. In Order No. 670, the Commission stated that the elements of a manipulation claim are: (1) use of a fraudulent scheme, (2) with the requisite scienter, (3) in connection with a Commission-jurisdictional transaction.⁴¹ As set forth below, the Commission affirms the ALJ’s findings that Hunter’s conduct during the at-issue trading days satisfies all three elements, and thus violates the Anti-Manipulation Rule. The record demonstrates that Hunter developed a trading strategy – executed on February 24, 2006, March 29, 2006, and April 26, 2006 – that was specifically intended to lower the settlement price of NG Futures Contracts in order to benefit his positions on other trading platforms. Hunter acted with reckless disregard as to the impact of his conduct upon the physical market for natural gas.

1. Fraudulent or Deceptive Behavior

a. The Initial Decision

33. The ALJ found that the pertinent facts relating to the challenged trades were undisputed. During the relevant time period, Hunter was the lead natural gas trader for Amaranth. In that role, Hunter traded NG Futures Contracts on NYMEX, and related natural gas swaps and options on the ICE and Clearport exchanges.⁴²

34. The ALJ explained that trading of NG Futures Contracts takes place in the NYMEX pit in an open outcry process, whereby traders from different brokerage houses receive orders via phone that are relayed to pit traders who transact through voice and hand signals. Such orders consist of either a “bid” – the price someone is willing to pay for a particular contract – or an “offer” – the price at which someone is willing to sell.

judge’s determinations of credibility for the obvious reason that he or she sees the witnesses and hears them testify All aspects of the witnesses’ demeanor ... may convince the observing trial judge that the witness is testifying truthfully or falsely. These same very important factors are unavailable to a reader of the transcript.”) (internal quotations omitted).

⁴⁰ *Williams Natural Gas Co.*, 41 FERC ¶ 61,037, at 61,095 (1987) (quoting *Pennzoil Co. v. FERC*, 789 F.2d 1128, 1135 (5th Cir. 1986)).

⁴¹ Order No. 670 at P 49.

⁴² Initial Decision at P 54 (citing Ex. S-1 at 57 (Kaminski)).

The highest bidder and lowest seller set the prevailing bid and offer prices. A buyer accepting the prevailing offer is “lifting the offer,” and a seller accepting the prevailing bid is “hitting the bid.” Selling aggressively is accomplished by hitting the bid rather than waiting to have an offer lifted. In the NYMEX pit, traders monitor each other’s activities, particularly for signs of aggressive trading.⁴³

35. NG Futures Contracts are generally most heavily traded in the last few months before they expire. And many trades take place during the last trading day and during the final settlement period. But Amaranth rarely sold significant volumes of expiring contracts during the settlement periods.⁴⁴ Indeed, Donohoe testified that Amaranth hardly ever carried a large futures position into the expiration day.⁴⁵ The ALJ found that this practice changed on February 24, 2006.

i. February trading

36. At the start of February 24, 2006, the expiration day for March 2006 NG Futures Contracts, Amaranth was short 1,729 contracts on NYMEX, and held 11,943 natural gas short swaps on ICE and Clearport. But during the day, Amaranth began purchasing a significant number of NG Futures Contracts, leaving it with a net long position in approximately 3,000 March 2006 NG Futures Contracts by the beginning of the settlement period. At the same time, Amaranth increased its short position on ICE and Clearport to 14,005 natural gas swaps.⁴⁶ At approximately 2:00 p.m., Amaranth began selling its March 2006 NG Futures Contracts, and ended the day with a flat position. Nearly 3,000 contracts were sold at fairly uniform levels during the thirty-minute settlement period, with some additional contracts being sold in a post-close session.⁴⁷

⁴³ Initial Decision at P 56-57 (citing Ex. S-1 at 19-20 (Kaminski), Tr. 304-07, 322-23 (Hunter), 1055, 1061-63, 1066, 1070-87 (Bolling)).

⁴⁴ Initial Decision at P 59, 61 (citing Staff Report, *Excessive Speculation in the Natural Gas Market: Hearing Before the Permanent Subcomm. On Investigations of the S. Comm. on Homeland Security and Governmental Affairs*, 110th Cong (2007), at 32 (Staff Report); Ex. S-1 at 58 (Kaminski)).

⁴⁵ Tr. 987-98 (Donohoe).

⁴⁶ Initial Decision at P 62-63 (citing Ex. S-1 at 97-98 (Kaminski)).

⁴⁷ Initial Decision at P 63-64 (citing Exs. S-1 at 98, 100-01 (Kaminski); S-11 at 10 (King)).

ii. March trading

37. The April 2006 NG Futures Contract expired on March 29, 2006. At the start of that day, Amaranth held a long position in 1,603 April 2006 NG Futures Contracts, and a short position in approximately 15,000 natural gas swaps on ICE and Clearport.⁴⁸ Again, Amaranth liquidated its long position at fairly uniform levels throughout the last thirty minutes of trading, while it held the ICE and Clearport positions until they expired.⁴⁹

iii. April trading

38. During April 2006, Amaranth reversed its large short position for May 2006 NG Futures Contracts. By April 26, 2006, the expiration date for the May contracts, Amaranth held a long position in 3,044 contracts. On that date, Amaranth increased its short natural gas swap position from 5,570 to 16,902. The company also held significant short positions for the June 2006 NG Futures Contracts and a net 17,590 long put options position related to the June 2006 contract. The ALJ found that the June put option position was equivalent to a short position in swaps because the put options would benefit from lower prices for June 2006 NG Futures Contracts, which are set in the last two minutes of trading on the expiration day.⁵⁰

39. On April 26, Hunter sold approximately 2,600 May NG Futures Contracts in the settlement period. Unlike previous months, the April sales were concentrated in the last eight minutes of the settlement period.⁵¹

iv. Conclusions regarding deceptive conduct

40. The ALJ found that Hunter's trading was fraudulent or deceptive. She found that Amaranth was a very large trader that accounted for 19.4, 15.0, and 14.4 percent of the market volume for the settlement periods in February, March, and April 2006, respectively.⁵² During the settlement periods, Amaranth traders hit bids – i.e., accepted purchase orders at the lower end of the bid-offer spread – “which almost guarantees a

⁴⁸ Initial Decision at P 65 (citing Ex. S-1 at 109 (Kaminski)).

⁴⁹ Initial Decision at P 65-66 (citing Exs. S-1 at 109, 111 (Kaminski); S-162A at ALX 045-46; Tr. 2061 (Rufa)).

⁵⁰ Initial Decision at P 67 & n.42 (citing Exs. S-1 at 112, 114-15, 117 (Kaminski); S-10 at 75 (Kaminski)).

⁵¹ Initial Decision at P 69 (citing Ex. S-1 at 113-14 (Kaminski)).

⁵² Initial Decision at P 73, 84.

lower price.”⁵³ The ALJ found that Amaranth generally traded below the volume-weighted average prices during the relevant settlement periods, which was “consistent with manipulation.”⁵⁴ The ALJ further determined that Amaranth’s large sale orders during the settlement periods disrupted others in the pit, which in turn affected prices.⁵⁵

41. The ALJ concluded that Amaranth’s positions on the ICE and Clearport trading platforms – ranging from 14,000 to 20,000 NYMEX-equivalent swaps – were unrivaled.⁵⁶ Indeed, the ALJ found that “no other trader operated at Amaranth’s combined scale of large futures trades on NYMEX and large opposing swaps on ICE.”⁵⁷ Amaranth’s large positions on the ICE and Clearport platforms during the at-issue settlement periods placed it in a position to benefit from falling NG Futures Contracts settlement prices.⁵⁸ And she found that Amaranth’s trades during those periods were profitable and that Hunter, in turn, stood to receive significant compensation from the profitability of his trading activities.⁵⁹

b. Hunter’s Position on Exceptions

42. Hunter disputes the ALJ’s conclusion that his trading activities amounted to fraudulent or deceptive conduct. Hunter initially asserts that trading in the open market with the intent to affect price, in the absence of some additional deceptive conduct, cannot constitute market manipulation. He maintains that the ALJ inappropriately relied on *SEC v. Masri*, 523 F. Supp. 2d 361 (S.D.N.Y. 2007) in concluding that trading with the intent to manipulate – even in the absence of other deceptive conduct – does, in fact, constitute market manipulation. Hunter contends that *Masri* pre-dates and conflicts with

⁵³ Initial Decision at P 84.

⁵⁴ Initial Decision at P 74.

⁵⁵ Initial Decision at P 70-71. A counterparty to Amaranth’s sales testified that the whole pit was watching Amaranth’s brokers and that the large orders led to “panicking on how I’m getting out of those trades.” (Tr. 1102-3 (Bolling)). Amaranth’s brokers testified that they had difficulty selling the requested volume (Tr. 2155 (DeLucia)), and that the sale orders led to a drop in price. (Tr. 2069-70 (Rufa)).

⁵⁶ Initial Decision at P 72-73.

⁵⁷ Initial Decision at P 72 n.49.

⁵⁸ Initial Decision at P 62, 72.

⁵⁹ Initial Decision at P 80 (citing, *inter alia*, Exs. S-1 at 122-28, 147 (Kaminski), S-10 at 72 (Kaminski), S-48, Tr. 319-20, 443 (Hunter)).

the Second Circuit's decision in *ATSI Communications v. Shaar Fund Ltd.*, 493 F.3d 87 (2d Cir. 2007), which Hunter argues holds that such open-market transactions do not violate the securities laws.⁶⁰

43. Hunter next argues that the Commission directed the ALJ to determine whether the challenged trading activities were specifically intended to, and did, result in an "artificial" price, as opposed to merely having an effect on the price of NG Futures Contracts.⁶¹ Hunter claims that the ALJ made no finding on this issue, but only cursorily held that Amaranth's trading "may have affected" prices and that Amaranth's trading at prices below the volume-weighted average price was "consistent with manipulation."⁶² Hunter asserts that the ALJ's failure to reach specific conclusions regarding price artificiality precludes any finding of liability under the Anti-Manipulation Rule.

44. Hunter further argues that any finding as to price artificiality cannot be based solely on the trader's intent to affect price. He claims that this case is similar to *United States v. Radley*, 659 F. Supp. 2d 803 (S.D. Tex. 2009), where the court, according to Hunter, found that legitimately priced contracts sold on the open market, even with the intent to lower prices, do not result in artificial prices.⁶³

45. With respect to the evidence relating to price artificiality, Hunter contends that the ALJ properly refused to credit the pricing analyses performed by Enforcement Litigation Staff's expert witnesses, Drs. Kaminski and King, but erred in discounting the testimony of his own economic expert, Dr. Quinn. Hunter contends that Dr. Quinn's analysis properly found that there was no statistical evidence indicating that Amaranth manipulated the settlement price for the at-issue expiration periods.⁶⁴

c. Commission Analysis

46. For purposes of the Anti-Manipulation Rule, fraudulent conduct includes "any action, transaction, or conspiracy for the purpose of impairing, obstructing or defeating a well-functioning market," and must be "determined by all of the circumstances of the case."⁶⁵ Here, the ALJ thoroughly analyzed the voluminous record, and the Commission

⁶⁰ Brief on Exceptions at 21-29.

⁶¹ Brief on Exceptions at 29 (citing Hearing Order at P 64).

⁶² Brief on Exceptions at 30 (citing Initial Decision at P 68, 70, 74).

⁶³ Brief on Exceptions at 30-31.

⁶⁴ Brief on Exceptions at 31-40.

⁶⁵ Order No. 670 at P 50.

has reviewed the Initial Decision, the record, and the parties' briefs. On the basis of that review, the Commission finds that the ALJ's specific and well-reasoned findings support her conclusion that Hunter's trading conduct was fraudulent or deceptive, and thus satisfied the first element of the Anti-Manipulation Rule.

47. The ALJ reached a number of specific findings that support the conclusion that Hunter's trading was fraudulent or deceptive. Prior to February 2006, Hunter rarely sold significant numbers of NG Futures Contracts during the settlement periods. That practice changed considerably during the settlement periods in February, March, and April 2006, when Hunter sold an exceptionally large number of such contracts.⁶⁶ These trades generally took place "at prices below those of other traders," and below the volume-weighted average price.⁶⁷ Indeed, Hunter's large sell orders forced his brokers to hit their bids, "which almost guarantee[d] a lower price."⁶⁸ This "exerted downward pressure on the market and created prices that were not the result of normal supply and demand."⁶⁹ At the same time, Amaranth amassed large swap and option positions on other trading platforms that would benefit from falling NG Futures Contract settlement prices.⁷⁰ Hunter, in turn, was compensated based on trading desk profitability and could achieve incentive bonuses based on whether he exceeded prior year's profits.⁷¹ The Commission agrees with these findings.⁷²

⁶⁶ Initial Decision at P 61 (citing Ex. S-1 at 58 (Kaminski)).

⁶⁷ Initial Decision at P 74, 84.

⁶⁸ Initial Decision at P 84. *See also id.* at P 70.

⁶⁹ Initial Decision at P 143 n.64. *See, e.g., Frey v. CFTC*, 931 F.2d 1171, 1175 (7th Cir. 1991) ("Manipulation ... is an intentional exaction of a price determined by forces other than supply and demand.").

⁷⁰ Initial Decision at P 84.

⁷¹ Initial Decision at P 80 (citing Ex. S-1 at 122-128 (Kaminski)).

⁷² Hunter's Brief on Exceptions contains a listing of Initial Decision paragraphs in which the ALJ purportedly "erred in its characterizations" of facts. *See, e.g.,* Brief on Exceptions at 1-5 (Exception Nos., 6-19, 21-23, 25, 27-43). But Hunter offers no explanation in support of his contentions; nor does he point to any relevant contrary evidence in the record. The Commission therefore rejects Hunter's unsupported assertions.

i. Manipulative intent

48. The Commission rejects Hunter's contention that, in the absence of some other deceptive conduct, so-called "open market" trading cannot constitute market manipulation. Section 4A of the Natural Gas Act proscribes otherwise legal conduct undertaken with manipulative intent, where a party intends to affect, or recklessly affects FERC-jurisdictional transactions. This is the identical construction of the identical language found in § 10(b) of the Securities Exchange Act of 1934 that was upheld by the D.C. Circuit in *Markowski v. SEC*, 274 F.3d 525 (D.C. Cir. 2001).⁷³ As we explained in the Hearing Order:

In *Markowski*, the court concluded that trading undertaken for the purpose of keeping prices at an artificial level serves to inject inaccurate information into the marketplace. In attempting to distinguish *Markowski* from the facts of this proceeding, Amaranth Parties obscure the core holding of that case: intentional manipulation of market prices for purpose of benefiting other instruments in the actor's portfolio is actionable, even in the absence of evidence that specific false statements were made. The Commission therefore rejects the contention that false statements are required in order to violate NGA section 4A.⁷⁴

49. Like this case, *Markowski* involved high volume trading for the purposes of controlling prices rather than in response to legitimate supply and demand, and an "external purpose" to benefit other positions owned by the alleged manipulator. The D.C. Circuit upheld as reasonable the Securities Exchange Commission's (SEC) determination that such conduct, if accompanied by manipulative intent, is prohibited by § 10(b):

We cannot find the Commission's interpretation to be unreasonable in light of what appears to be Congress' determination that "manipulation" can be illegal solely because of the actor's purpose.⁷⁵

50. The principle established in *Markowski* is consistent with the language of § 4A of the Natural Gas Act and furthers its remedial purposes. The Commission therefore reaffirms its prior determination that "open-market transactions send false information into the marketplace if such transactions are undertaken with the intention of creating a

⁷³ See Order No. 670 at P 30, 32 (noting Commission's intent to rely on securities law precedent in interpreting § 4A of the Natural Gas Act).

⁷⁴ Hearing Order at P 65.

⁷⁵ *Markowski*, 274 F.3d at 529.

false price.”⁷⁶ The difference between legitimate open-market transactions and illegal open-market transactions may be nothing more than a trader’s manipulative purpose for executing such transactions

51. Hunter argues that courts have found so-called open market trading to be manipulative *only* where there was also some other deceptive conduct. But this is incorrect. A number of courts have recognized that transactions undertaken with manipulative intent, rather than a legitimate economic motive, send inaccurate price signals to the market: “Because every transaction signals that the buyer and seller have legitimate economic motives for the transactions, if either party lacks that motivation, the signal is inaccurate.”⁷⁷ Accordingly, transactions entered into with manipulative intent can serve as the basis for a manipulation claim, even in the absence of some other deceptive conduct.⁷⁸

52. Hunter’s argument is primarily based upon the Second Circuit’s decision in *ATSI Communications, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87 (2d Cir. 2007).⁷⁹ But the Second Circuit did not create a safe harbor for manipulative schemes premised upon otherwise legal trading activities. Rather, the *ATSI* court held that allegations of legal trading activities, standing alone, are insufficient to state a manipulation claim; such activities must be “willfully combined with something more.”⁸⁰ And it is often scienter – i.e.,

⁷⁶ Hearing Order at P 64-65.

⁷⁷ *In re Amaranth Natural Gas Commodities Litig.*, 587 F. Supp. 2d 513, 534 (S.D.N.Y. 2008). See also *Masri*, 523 F. Supp. 2d at 372 n.17 (“a transaction entered with manipulative intent distorts the functioning of the market and sends a false message to its participants”).

⁷⁸ See, e.g., *Masri*, 523 F. Supp. 2d at 372 (“if an investor conducts an open-market transaction with the intent of artificially affecting the price of the security ... it can constitute market manipulation”); *In re Amaranth*, 587 F. Supp. 2d at 534 (“A legitimate transaction combined with an improper motive is commodities manipulation”); *CFTC v. Amaranth Advisors, LLC*, 554 F. Supp. 2d 523, 534 (S.D.N.Y. 2008) (same); *Initial Public Offering Sec. Litig.*, 241 F. Supp. 2d 281, 391 (S.D.N.Y. 2003) (finding no case or academic literature supporting any additional requirements in “so-called open market” cases).

⁷⁹ Brief on Exceptions at 23-24.

⁸⁰ *ATSI*, 493 F.3d at 101. See also *id.* at 101, 104 (affirming dismissal of claim on grounds that “[n]owhere does ATSI particularly allege what the defendants did – beyond simply mentioning common types of manipulative activity – or state how this activity affected the market in ATSI’s stock”).

manipulative intent – that “is the only factor that distinguishes legitimate trading from improper manipulation.”⁸¹

53. Here, the ALJ did not conclude that Hunter violated the Anti-Manipulation Rule simply because he sold significant volumes of NG Futures Contracts during the at-issue settlement periods. Rather, as discussed more fully below, she found that those sales on NYMEX were made with the intent to drive down the settlement price – and not in accordance with the normal interplay of supply and demand – in order to benefit the short swap positions Hunter accumulated on the ICE and Clearport platforms. The success of the manipulative scheme thus depended upon the interplay of trading activities in two separate markets, with Hunter trading against his interest in the futures market in order to reap larger profits in the separate swap market. Given these findings, we do not agree with Hunter’s assertion that the conduct at issue here involved nothing more than open market trading that was incapable of deceiving market participants.⁸²

ii. Artificial and prevailing prices

54. The Commission also rejects the claim that the ALJ was required, and failed, to find that (1) Hunter’s conduct resulted in an artificial price, and (2) Hunter acted with specific intent to create an artificial price.⁸³ The existence of an artificial price is not an element of a claim under § 4A of the Natural Gas Act or the Anti-Manipulation Rule (nor under § 10(b) of the Exchange Act, upon which § 4A was modeled).⁸⁴

⁸¹ *ATSI*, 493 F.3d at 102. *See also In re Amaranth*, 587 F. Supp. 2d at 534 (“The ‘something more’ [referenced in *ATSI*] is anything that distinguishes a transaction made for legitimate economic purposes from an attempted manipulation”).

⁸² Brief on Exceptions at 21.

⁸³ Brief on Exceptions at 29-31.

⁸⁴ Order No. 670 at P 48-54 (discussing elements of manipulation claims). *See, e.g., SEC v. Tambone*, 550 F. 3d 106, 130 (1st Cir. 2008) (finding that the SEC is not required to prove investor reliance, loss causation or damages in a 10b-5 action); *Berko v. SEC*, 316 F.2d 137, 143 (2d Cir. 1963) (same). Hunter’s argument to the contrary is premised upon inapposite cases concerning alleged violations of the Commodities Exchange Act, which has been interpreted as requiring proof of an artificial price. *See, e.g., In re DiPlacido*, No. 01-23, 2008 CFTC LEXIS 101 at *73-74 (Nov. 5, 2008), *aff’d by summary order*, 2009 U.S. App. LEXIS 22692 (2d Cir. Oct. 16, 2009); *Radley*, 659 F. Supp. 2d at 813-14. Notably, the CFTC interprets its new anti-manipulation authority under § 6(c)(1) of the Commodities Exchange Act – recently added by the Dodd-Frank Wall Street Reform and Consumer Protection Act and, like NGA § 4A, modeled on § 10(b) of the Securities Exchange Act of 1934 – as not requiring a showing of artificial price. *Prohibition of Market Manipulation*, 75 Fed. Reg. 67,657 (CFTC Nov. 3, 2010).

55. Hunter correctly notes that the Hearing Order stated that an issue in this proceeding was whether the Respondent's trading of NG Futures Contracts was intended to create a price that was not reflective of supply and demand and, in fact, resulted in an artificial price.⁸⁵ But this passage did not modify the standards established in Order No. 670 for evaluating claims of market manipulation. It simply observed that, if the ALJ found that Hunter specifically intended to create an artificial price, and if an artificial price occurred, it would be reasonable to find that Hunter's conduct constituted manipulation. In other words, such findings would be a sufficient, but not a necessary, basis for finding manipulation. The ALJ correctly looked to Order No. 670 as the basis for her determination on this issue.

56. The Commission nonetheless rejects Hunter's assertion that there is no substantive, objective evidence of price artificiality. An artificial price is simply one that is not produced by the normal forces of supply and demand.⁸⁶ The Initial Decision includes a number of findings in support of the conclusion that, on the expiration days in question, the settlement price of NG Futures Contracts was not established by bona fide forces of supply and demand. For example, the ALJ found that Amaranth's extensive sales on February 24 "forc[ed] its brokers to hit bids to sell the volume," which meant that Amaranth "trad[ed] at a lower price than [they] would have had to, had [it] been fortunate enough to have [its] offers lifted."⁸⁷ These large sales "had an impact on prices in the pit."⁸⁸ In addition, "Amaranth traded at prices generally below those of other traders," and below the volume-weighted average price for the at-issue settlement periods.⁸⁹ The ALJ further found that Hunter's trades were driven by a desire to lower the settlement price in order to benefit his positions on other trading platforms, rather than any analysis of supply and demand.⁹⁰ Based on the foregoing, the ALJ reasonably concluded that the record "supports the finding that Amaranth's extraordinary selling

⁸⁵ Hearing Order at P 64.

⁸⁶ *Frey*, 931 F.2d at 1175 (an artificial price is "a price determined by forces other than supply and demand"); *Cargill, Inc. v. Harding*, 452 F.2d 1154, 1163 (9th Cir. 1971) (same); *United States v. Russo*, 74 F.3d 11383, 1394 (2d Cir. 1995) (upholding jury instruction defining artificial price as one other than "the investment value of the stock as determined by available information and market forces").

⁸⁷ Initial Decision at P 56, 70.

⁸⁸ Initial Decision at P 70.

⁸⁹ Initial Decision at P 73, 74.

⁹⁰ Initial Decision at P 143, 215.

during the at-issue settlement periods exerted downward pressure on the market and created prices that were not the result of normal supply and demand.”⁹¹

57. The Commission also rejects Hunter’s related contention that the ALJ erred by failing to require Enforcement Litigation Staff to prove that his trades were not made at prevailing prices.⁹² Whether Hunter traded at the prevailing prices is not a component of the inquiry under the Anti-Manipulation Rule. Moreover, Hunter’s trading in fact moved the “prevailing price” because he directed the sale of significant numbers of NG Futures Contracts during the three at-issue settlement periods.⁹³ By directing these sales, Hunter forced his brokers to hit their bids and sell at low prices, which in turn affected other traders, one of whom characterized Hunter’s brokers’ trading as like a “freight train.”⁹⁴

iii. Expert testimony

58. Hunter contends that, in concluding that his conduct resulted in an artificial price for NG Futures Contracts, the ALJ placed undue weight upon the descriptive trading statistics put forth by Enforcement Litigation Staff’s economic expert, Dr. Kaminski. Hunter further argues that there is no valid evidentiary basis to find price artificiality in light of the ALJ’s rejection of the statistical pricing analyses proffered by Dr. Kaminski and Dr. King, the Enforcement Litigation Staff’s rebuttal witness.⁹⁵ Hunter’s arguments in this regard mischaracterize the Initial Decision.

59. The ALJ did find flaws in the analyses performed by Drs. Kaminski and King (and, as noted below, Hunter’s own expert) regarding the impact of Hunter’s trading practices upon the settlement prices of NG Futures Contracts.⁹⁶ But the ALJ did not base her findings upon those analyses, nor was she required to. The ALJ explained that the expert witnesses also provided “descriptive statistics” or objective data that describe Hunter’s trading conduct. She reasonably relied on these descriptive statistics, finding

⁹¹ Initial Decision at P 143 n.64.

⁹² Brief on Exceptions at 28-29.

⁹³ Amaranth’s sales accounted for 19.4 percent, 15.0 percent, and 14.4 percent of the trading during the settlement periods on February 24, March 29, and April 26, 2006, respectively. *See* Initial Decision at P 73.

⁹⁴ Tr. 1110-11 (Bolling). *See also* Initial Decision at P 70, 73-74, 84.

⁹⁵ Brief on Exceptions at 31-36.

⁹⁶ *See, e.g.*, Initial Decision at P 76-78 (discussing analyses performed by Drs. Kaminski and King).

that they are more reliable than the correlation and regression analyses proffered by the experts.⁹⁷ On the basis of these statistics, and a consideration of Hunter's trading practices, the impact of that trading upon others, and Hunter's positions on other trading platforms, the ALJ reasonably concluded that Hunter engaged in fraudulent or deceptive conduct.⁹⁸

60. Hunter also takes issue with the ALJ's determination that market fundamentals (e.g., information regarding natural gas storage and weather) did not explain the price movements during the at-issue settlement periods.⁹⁹ The ALJ carefully examined the parties' submissions and found that "there is no evidence in the record indicating that market fundamentals had any bearing on the price during the at-issue settlement periods."¹⁰⁰ The experts presented by the parties, including Hunter's own expert, Dr. Quinn, generally agreed that it did not appear that market fundamentals played a role in pricing during the at-issue settlement periods.¹⁰¹ Accordingly, the Commission rejects Hunter's claim, and affirms the ALJ's findings that market fundamentals had no bearing on the at-issue settlement prices.

61. The Commission also affirms the ALJ's determination not to credit the analyses performed by Hunter's expert, Dr. Quinn, that purport to demonstrate the absence of (1) any correlation between Hunter's trading and price movements during the settlement period, and (2) price recovery after the settlement period, which is said to indicate the absence of manipulation.¹⁰² Initially, with respect to price recovery, the ALJ explained

⁹⁷ Initial Decision at P 75.

⁹⁸ *See, e.g.*, Initial Decision at P 84.

⁹⁹ Brief on Exceptions at 35-38.

¹⁰⁰ Initial Decision at P 64 n.41.

¹⁰¹ *See, e.g.*, Ex. S-10 at 14 (Kaminski) (stating that no "additional information about market fundamentals arrived during the settlement windows on the three at-issue settlements ..."); Ex. S-11 at 188 (King) (stating that she "did not find any [news or market] reports during or immediately preceding the at-issue settlement periods that appeared likely to cause the price movements that occurred during the settlement windows."); Tr. 1899 (Quinn) (testifying that he was unable to say for certain that market fundamentals explain prices during the at-issue periods). The ALJ denied Hunter's attempt to introduce rebuttal evidence into the record regarding certain weather patterns in 2009. The Commission affirms the ALJ's decision to reject Hunter's proposed testimony as irrelevant and untimely. Initial Decision at P 64 n.41.

¹⁰² Initial Decision at P 79.

that prices for prompt-month futures contracts are established in the settlement period ending at 2:30 pm of the settlement day, and thus, no new prices or trading can affect that particular prompt-month contract.¹⁰³ And both Hunter and Enforcement Litigation Staff witnesses agreed that price recovery may be the result of a number of factors, including market fundamentals and typical price volatility.¹⁰⁴ Moreover, the ALJ specifically found flaws with Dr. Quinn's analysis of price recovery, finding that "Dr. Quinn narrowly looks for price recovery based on the last two minutes of the settlement period," and that "this analysis is also quite sensitive to the underlying assumptions, as demonstrated by Dr. King."¹⁰⁵ The ALJ similarly found that Dr. Quinn's correlation analysis omitted key variables and, as a result, was "not found [to be] persuasive."¹⁰⁶ The Commission agrees with the ALJ's reasonable findings in this regard.

62. In summary, the Commission finds that the ALJ correctly found that the evidence established that Hunter conducted trades in the NYMEX futures market with the intent to depress prices, actually caused artificial prices in that market, and held significant positions on other platforms that would benefit from those artificially depressed prices. The Commission therefore affirms the ALJ's determination that Hunter's trading conduct constituted fraud in violation of the first prong of the Anti-Manipulation Rule.

2. Scienter

a. The Initial Decision

63. The ALJ found that Hunter intentionally manipulated the NG Futures Contract settlement price by selling significant numbers of futures contracts during the settlement periods of the at-issue months. This trading was designed to lower the settlement price in order to benefit swap positions held by Hunter on other trading platforms.¹⁰⁷ In reaching this conclusion, the ALJ determined that Hunter (1) knew the NYMEX settlement period could be manipulated, (2) had a financial motive to engage in manipulation, and (3) employed a trading strategy during the at-issue months that differed significantly from that utilized previously.

¹⁰³ Initial Decision at P 70 n.47.

¹⁰⁴ See, e.g., Ex. RES 2-1 at 41-42 (Quinn); Tr. 1912 (Quinn); Ex. S-11 at 68 (King).

¹⁰⁵ Initial Decision at P 79.

¹⁰⁶ Initial Decision at P 79.

¹⁰⁷ Initial Decision at P 143.

64. In weighing the evidence presented by the parties, the ALJ gave close consideration to Hunter's justifications for his trading activity. Hunter claimed that his trading of the March 2006 NG Futures Contracts was driven by the expectation that there would be significant buying pressure during the settlement period. He purportedly believed that this pressure would allow him to obtain above-average prices by selling futures ratably throughout the settlement period. The ALJ determined that Hunter's explanation was contradicted by the record and amounted to an "*ex post facto* [justification] ... solely intended to obfuscate the truth."¹⁰⁸ Among other things, the ALJ noted that there is no statistical reason to expect that selling ratably throughout the settlement period would permit a trader to obtain prices in excess of the settlement price.¹⁰⁹ She also observed that the manner in which Hunter structured his trades prevented him from benefiting substantially from the purportedly expected buying pressure. At the same time, Hunter continued to hold substantial short swap positions that would be harmed by an increase in the NYMEX settlement price. "Hence, the argument that [Hunter] was going to benefit from repeated strong March 2006 buying is not credible."¹¹⁰

65. Hunter disclaimed any responsibility for Amaranth's trading on March 29, 2006 because he was inaccessible while out of the country on vacation. He and his execution trader, Donohoe, professed no memory of the relevant events, a claim the ALJ found "not credible" given the large size of Amaranth's trades. The ALJ determined that Hunter was responsible for devising Amaranth's natural gas trading strategy and that Donohoe merely executed orders on his behalf. The trading strategy employed in March mirrored that utilized in February, and was "a strategy [that] does not require Hunter's presence, as it may be implemented with a simple instruction."¹¹¹ The ALJ concluded that Hunter's explanation for the trading of the April 2006 NG Futures Contracts was "a story [developed] to defend his actions in this matter which is inconsistent with the record evidence."¹¹²

66. Hunter argued that his trading on April 26, 2006 was motivated by an attempt to comply with a corporate directive to limit risk by reducing the size of his portfolio. This would be accomplished by selling long winter contracts and buying or otherwise

¹⁰⁸ Initial Decision at P 167.

¹⁰⁹ Initial Decision at P 158.

¹¹⁰ Initial Decision at P 163.

¹¹¹ Initial Decision at P 172.

¹¹² Initial Decision at P 172.

liquidating short summer positions. The ALJ found that Hunter's explanation for his April trading also lacked credibility. Among other things, Hunter could not explain how selling May 2006 NG Futures Contracts in the settlement period played a role in his portfolio reduction strategy.¹¹³ Moreover, if portfolio reduction truly were Hunter's aim, he employed a trading strategy that was needlessly complex and costly to attain that goal.¹¹⁴ Further, Hunter's portfolio reflected "little evidence of trimming," and actually grew progressively larger between March and September 2006.¹¹⁵ The ALJ further found that "Hunter misrepresented his June position on the witness stand."¹¹⁶ Rather than being long in June as claimed, Hunter was actually short in May and June. And lower settlement prices would benefit these positions.

67. The ALJ found that Hunter's trading in the three at-issue months followed a similar pattern with "heavy prompt-month selling (relative to what Amaranth typically sold)."¹¹⁷ She found it "curious" that Hunter offered "three very different explanations" for "largely the same trading behavior."¹¹⁸ And in each explanation, "there is studiously an attempt to obfuscate the issue of the positions on the other exchanges."¹¹⁹ The ALJ concluded that "Hunter's arguments are not credible" and that the "preponderance of the evidence demonstrates that Hunter intended to and did manipulate the prices in the three at-issue months."¹²⁰

b. Hunter's Position on Exceptions

68. On exceptions, Hunter challenges all aspects of the ALJ's scienter findings. First, he argues that it is impossible for a financial trader to depress the settlement price of the prompt-month contract by selling large amounts of futures contracts in the settlement period. Hunter contends that no one can predict how the market will react to concentrated buying or selling of futures during the thirty-minute settlement period

¹¹³ Initial Decision at P 176-77.

¹¹⁴ Initial Decision at P 178-82.

¹¹⁵ Initial Decision at P 188.

¹¹⁶ Initial Decision at P 185.

¹¹⁷ Initial Decision at P 190.

¹¹⁸ Initial Decision at P 190.

¹¹⁹ Initial Decision at P 189.

¹²⁰ Initial Decision at P 191.

because there is roughly an equal amount of buying and selling interest due to the fact that all traders need to attain a flat position.¹²¹

69. Hunter next argues that there was no financial incentive for him to attempt to manipulate the prompt-month settlement price because his portfolio was largely based on a short summer/long winter spread strategy, rather than outright positions in futures contracts. With this strategy, Hunter argues he was only concerned with the widening or contraction of the price spread between the correlated contracts. There would be no incentive to manipulate the prompt-month settlement price because there was no way to predict how the prices on the other side of the spread would react, and thus whether the manipulation would benefit or harm his portfolio. Hunter further contends that the ALJ erred in finding that he possessed a financial motive to engage in manipulation. According to Hunter, the profits garnered from the alleged manipulation amounted to a “mere rounding error” of less than one percent of his book.¹²²

70. With respect to his trading on February 24, 2006, Hunter claims that contemporaneous documents support his contention that he conducted an experiment to take advantage of buying pressure he expected to carry over from an unusual options rally witnessed on February 23. Hunter believed that the anticipated buying pressure would allow him to sell futures ratably over the thirty-minute settlement period, yet still obtain an average selling price above the settlement price. Hunter claims that he did not intend to make a lot of money with the experiment, but rather intended to make a small amount of money while gaining valuable knowledge about the settlement process.¹²³

71. Hunter argues that the ALJ misunderstood the evidence regarding his February trading strategy. For instance, he asserts that contrary to the ALJ’s findings, he was indifferent to the price movement of the March/April spread. He similarly argues that the ALJ erred in concluding that one aspect of his trading – the use of Exchange of Futures for Swap (EFS) transactions – was largely insulated from price movements. According to Hunter, the record demonstrates that while such positions were insulated from price movements prior to the settlement period, this was not the case during the settlement period.¹²⁴

¹²¹ Brief on Exceptions at 42-47.

¹²² Brief on Exceptions at 47-53.

¹²³ Brief on Exceptions at 55-58.

¹²⁴ Brief on Exceptions at 58-63.

72. As to the at-issue trading in March 2006, Hunter contends that the record is devoid of evidence establishing that he played any role in Amaranth's trading activities. He points out that the ALJ accepted the fact that he was out of the country on the settlement day, but ignored testimony that he did not confer with Amaranth employees regarding trading activities during that time period. In fact, asserts Hunter, Donohoe always had full discretion to execute Hunter's trades and manage the portfolio's expiring futures and options positions.¹²⁵

73. Hunter contends that the ALJ ignored evidence establishing that his trading in April 2006 was designed to comply with a risk reduction directive issued by Amaranth's senior management. Hunter asserts that the ALJ exceeded her authority in concluding that Hunter's risk reduction strategy was a needlessly complex and costly means to accomplish the stated end. Hunter also argues that the ALJ misunderstood the evidence with respect to his trading activity in the last eight minutes of the settlement period. Rather than an attempt to manipulate, Hunter contends the concentration of his May 2006 NG Futures Contract sales in this time period was driven by his inability to sell a sufficient amount of winter positions earlier in the day. He argues that, in fact, selling in the last eight minutes of the settlement period (rather than ratably throughout the period) caused him to lose money on a large trade made earlier in the day.¹²⁶

74. Hunter also claims that the ALJ improperly ignored evidence purportedly showing that, prior to selling NG Futures Contracts in the settlement period, he did not want a lower settlement price. He further argues that in evaluating the credibility of his explanation for his April trading, the ALJ improperly considered evidence demonstrating that Hunter's portfolio actually grew after April 26, 2006.¹²⁷

c. Commission Analysis

75. In order to constitute a violation of the Anti-Manipulation Rule, a party's fraudulent conduct must be undertaken with the requisite scienter – i.e., knowingly, intentionally, or recklessly.¹²⁸ As the Supreme Court has recognized, "proof of scienter ... is often a matter of inference from circumstantial evidence."¹²⁹ And because

¹²⁵ Brief on Exceptions at 65-66.

¹²⁶ Brief on Exceptions at 71-75.

¹²⁷ Brief on Exceptions at 75-77.

¹²⁸ Order No. 670 at P 52-53.

¹²⁹ *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 n.30 (1982).

determining “[i]ntent is a slippery matter, ... deference to the trier of fact is particularly important when it comes to findings involving scienter.”¹³⁰

76. The Initial Decision reflects the ALJ’s thorough consideration of the evidence and arguments put forth by the parties regarding the intent behind Hunter’s trading strategy on the at-issue expiration days. The Commission agrees with the ALJ’s conclusion that the preponderance of the evidence demonstrates that Hunter intended to, and did, manipulate the settlement price of NG Futures Contracts during the three at-issue expiration days. Hunter sold a significant volume of NG Futures Contracts during the settlement period in order to lower the settlement price, which in turn would benefit his swap and option positions on other trading platforms. The record demonstrates that Hunter employed a trading pattern during the at-issue months that deviated significantly from all prior periods; had a financial motive for the manipulation; understood that lowering the NG Futures Contracts settlement price would benefit his related positions on other trading platforms; and believed that the NYMEX settlement period could be manipulated.

77. The Commission agrees with, and gives appropriate deference to, the ALJ’s determination that Hunter’s explanations for his trading strategies during the at-issue periods were neither candid nor credible.¹³¹ That determination was based on a careful evaluation of witness testimony, considered in the context of other record evidence (particularly contemporaneous instant messages documenting Hunter’s mindset). We agree with the ALJ’s conclusion that “Hunter’s explanations of his conduct are not credible and amount to after-the-fact defenses of his actions.”¹³² Significantly, while Hunter provides differing explanations for the motivation behind his trading during each period, the trading pattern in each period is strikingly similar – the sale of significant numbers of NG Futures Contracts during the settlement period, while maintaining, and even expanding, significantly larger positions on other trading platforms that would benefit from a depressed settlement price.

¹³⁰ *Bennett v. Local Union No. 66, Glass, Molders, Pottery, Plastics and Allied Workers Int’l*, 958 F.2d 1429, 1438 (7th Cir. 1992).

¹³¹ *See, e.g.*, Initial Decision at P 160 (Hunter’s “story ... [is] inconsistent with the record evidence”), 165 (“Hunter exhibited significant selective memory in this case”), 167 (Hunter’s explanations are “ex post facto and solely intended to obfuscate the truth”), 189 (“in all of Hunter’s explanations there is studiously an attempt to obfuscate the issue of the positions on other exchanges”), 212 (“Hunter has not been forthright with this tribunal.”).

¹³² Initial Decision at P 212.

78. To properly consider Hunter's exceptions with respect to the at-issue trades, the Commission addresses each of the at-issue trading periods separately below. Before doing so, however, we address certain of the ALJ's scienter findings that generally relate to Hunter's intent during the relevant time periods.

i. Hunter's knowledge regarding the susceptibility of the NYMEX futures market to manipulation

79. The ALJ found that "the evidence in this case conclusively shows that Hunter knew the natural gas futures market could be manipulated."¹³³ We agree with this conclusion. Hunter acknowledges his belief that the two minute settlement period for prompt-next contracts could be manipulated,¹³⁴ but disclaims any belief that manipulation was possible with respect to the thirty-minute settlement period for prompt-month futures contracts. The record evidence indicates otherwise.

80. The record indicates that on August 30, 2006, Amaranth sent a letter to NYMEX raising concerns regarding possible market manipulation during the thirty-minute settlement period for prompt-month futures contract (in that case, the September 2006 contract).¹³⁵ The letter alleged that certain trading during the settlement period was motivated by an intent to "affect the price of the September NG contract" and that the resulting price movement "did not reflect bona fide supply and demand market forces."¹³⁶ When testifying about this letter, Hunter acknowledged that he had observed price movements during the thirty-minute settlement period for the September 2006 NG Futures Contract that did not stem from bona fide supply and demand.¹³⁷ On exceptions, Hunter contends that a Senate Report regarding speculation in the natural gas market found that the manipulation alleged in Amaranth's August 30 letter stemmed from the massive purchase of swaps on ICE, and not futures contracts on NYMEX. But the Senate Report makes no such finding. Indeed, it acknowledges the significant volume of futures contracts traded on the expiration day and generally observes that trading on both

¹³³ Initial Decision at P 144.

¹³⁴ Tr. 568 (Hunter).

¹³⁵ See Initial Decision at P 144; Ex. S-166; Brief on Exceptions at 43 (noting that the August 2006 letter concerned "possible market manipulation in the final 30-minute settlement period").

¹³⁶ Ex. S-166.

¹³⁷ Tr. 888-89 (Hunter); Exs. S-269, S-166.

the NYMEX and ICE platforms was significant.¹³⁸

81. Hunter's belief that the thirty-minute settlement period was susceptible to manipulation is further evidenced in a series of instant messages on April 26 – the expiration day for May 2006 NG Futures Contracts – in which Hunter dubbed a fellow natural gas trader as the “master of moving the close” due to his ability to “jack the settle.”¹³⁹ At the hearing, Hunter also acknowledged that market participants buying or selling large volumes could affect prices, as did floor brokers DeLucia and Rufa.¹⁴⁰

82. The Commission also rejects Hunter's claim that it is impossible to manipulate the thirty-minute settlement period because “no matter how much sell side pressure there is, there will be a roughly equal amount of buy side pressure to meet it, because everyone has to get flat.”¹⁴¹ But not everyone has to get flat. As the ALJ found, every month thousands of contracts go to delivery. And Hunter knew that physical natural gas traders, who did not need to be flat, traded in the settlement period and that their activities could create imbalances and price movements in the market.¹⁴²

ii. Hunter's financial motive for manipulation

83. The Commission's conclusion that Hunter acted with the requisite scienter is buttressed by the existence of a financial motive to pursue the manipulative trading strategy. Hunter held significant positions in other trading platforms on all three at-issue trading days that would benefit from lowered NG Futures Contract settlement prices. Hunter was compensated based on the profitability of his “book” – i.e., the portfolio of financial instruments under his management. He stood to earn at least seven percent of the trading desk's net profits, and could receive an incentive payment if he exceeded the previous year's peak results.¹⁴³ And the evidence demonstrates that the at-issue trades were profitable. Amaranth's Profit and Loss reports show a \$45,000,000 profit on

¹³⁸ Staff Report at 107.

¹³⁹ Initial Decision at P 145; Ex. S-18, S-19; Tr. 401 (Hunter).

¹⁴⁰ Initial Decision at P 145 (citing Tr. 403 (Hunter); Tr. 2082 (Rufa), 2128 (DeLucia)).

¹⁴¹ Brief on Exceptions at 44.

¹⁴² Tr. 565 (Hunter).

¹⁴³ Initial Decision at P 80 (citing Ex. S-1 at 122-28, 147 (Kaminski)).

February 24 alone, including substantial gains with respect to individual strategies that benefited from a lower NG Futures Contract settlement price.¹⁴⁴

84. Hunter argues that any profit derived from the at-issue trades amounted to a “mere rounding error” of the value of his book as a whole.¹⁴⁵ But the fact remains that the gains realized through the manipulative trading strategies had the potential to garner Hunter significant compensation. And regardless of whether the manipulative trading strategy was the primary driver of Hunter’s portfolio, it was still profitable in its own right. We therefore affirm the ALJ’s finding that Hunter possessed a financial motive to engage in manipulation.¹⁴⁶

85. Hunter argues that he lacked a profit motive to manipulate the NG Futures Contract settlement because the value of his book was based on seasonal spreads – i.e., the difference between natural gas prices for summer and winter months – rather than outright positions, which would make or lose money based on the price movements in any single month.¹⁴⁷ However, Hunter’s instant messages expressing his desire for the settlement price for March 2006 to “get smashed” belies the assertion that the makeup of his portfolio precluded any interest in the settlement price for prompt-month futures contracts.¹⁴⁸ And Amaranth’s profit and loss statement for February 24 also demonstrates the benefit to Hunter’s portfolio occasioned by a decrease in the March 2006 NG Futures Contract settlement price: “gained +198mm on short Mar-July positions as prices decreased by an average of \$0.05.”¹⁴⁹

86. The ALJ acknowledged that Hunter’s principal strategy during the relevant time period was a summer/winter spread (generally short summer/long winter).¹⁵⁰ But the ALJ found – and the Commission agrees – that “the fact that a portfolio is solely based on spreads does not preclude profitable manipulation of the prompt-month contract” –i.e., price declines in near months (where Hunter is short) will not necessarily result in the

¹⁴⁴ Initial Decision at P 80, 152.

¹⁴⁵ Brief on Exceptions at 52-53.

¹⁴⁶ Initial Decision at P 152.

¹⁴⁷ Brief on Exceptions at 48-49.

¹⁴⁸ Ex. S-45.

¹⁴⁹ Ex. S-48. *see also* Tr. 437-39 (Hunter). The “+198mm” refers to a \$198 million gain in Amaranth’s natural gas portfolio for the week ending February 24, 2006.

¹⁵⁰ Initial Decision at P 80.

same level of declines in forward months (where Hunter is long).¹⁵¹ Indeed, Hunter himself testified that near month prices are more volatile, provided examples of how near month price declines could result in profits, and acknowledged that such declines had benefitted Amaranth's book.¹⁵² The record further supports the ALJ's explanation that "gains for the prompt-month are realized on settlement day," but "losses for the prompt-next month are temporary" since the price quickly recovers from manipulation.¹⁵³ And while Hunter claims that he could not have known how a decline in the settlement price in prompt-month contracts would affect his portfolio as a whole,¹⁵⁴ the record indicates that risk stress scenarios permitted him to make an informed judgment about such a decline. Hunter was involved in the development of stress scenarios and their results were documented in Daily Energy Risk Reports which were available to him.¹⁵⁵

87. In sum, the Commission finds that the record supports the conclusion that Hunter was financially motivated to manipulate the NG Futures Contracts settlement price during the at-issue months.

iii. Deviation from prior trading strategy

88. The Commission agrees with the ALJ's finding that Hunter's trading pattern during the three at-issue months departed significantly from his prior practice. Here, when considered in the context of the entire record, that departure is additional evidence of an intent to manipulate. It is undisputed that: (1) Amaranth traders were generally advised to attain a flat position prior to the expiration day; (2) prior to February 2006, Amaranth had not sold more than 50 NG Futures Contracts in any settlement period; (3) in the February, March and April 2006 settlement periods, Amaranth sold 2,901, 1,300, and 2,597 NG Futures Contracts, respectively; and (4) Amaranth's sales on the expiration days in February and April were each three times larger than the net contracts sold by any other single seller in any previous settlement period.¹⁵⁶

¹⁵¹ Initial Decision at P 81.

¹⁵² Tr. 437-39, 487-88, 525-26, 878-80 (Hunter). *See also* Ex. S-48.

¹⁵³ Initial Decision at P 81 (citing Exs. RES 2-1 at 6, 40-42 (Quinn); S-11 at 63, 82, 166 (King)).

¹⁵⁴ Brief on Exceptions at 50-51.

¹⁵⁵ *See* Initial Decision at P 168, Ex. RES-4-1 at 17-19 (Chasman); Tr. 406-07 (Hunter).

¹⁵⁶ Initial Decision at P 150-51 (citing Exs. S-1 at 57-58, 99-100, 109-10, 113-14 (Kaminski); S-2 at 6 (Arora); S-11 at 41-44 (King)).

89. Hunter argues that the departure from his established trading practice in February, March, and April 2006 is not evidence of intent to manipulate. The Commission agrees that such evidence, standing alone, would not necessarily support a finding of scienter. But it is reasonable to rely upon the stark departure from Hunter's established trading patterns in February 2006 – a departure that was repeated in March and April – as one piece of evidence that leads to the conclusion that Hunter acted with intent to manipulate.

iv. February trading

90. The Commission affirms the ALJ's determination that Hunter intentionally manipulated the settlement price of the March 2006 NG Futures Contracts by acquiring a large amount of such contracts prior to the commencement of the settlement period, for the purpose of selling them during the February 24, 2006 settlement period in order to lower the NG Futures Contract settlement price. Hunter undertook this conduct in order to benefit positions he held on other trading platforms that would increase in value as the NG Futures Contract settlement price declined.

91. This finding is supported by, among other things, contemporaneous instant messages sent by Hunter that illuminate his intent with respect to the February trading. On February 23, 2006, Hunter advised Donohoe, his execution trader, "ok – end of day tomorrow still stands."¹⁵⁷ He then instructed Donohoe to make sure there were "lots of futures to sell MoC [Market on Close] tomorrow."¹⁵⁸ At noon on February 24, Hunter advised a colleague that he "just need[ed] H" – i.e., the March 2006 NG Futures Contracts – "to get smashed" – i.e., fall very quickly – "on settle."¹⁵⁹ Minutes later, Donohoe reported that he had acquired a 3,111 long futures position. Hunter responded "cool," "that should be enough."¹⁶⁰ Shortly before the settlement period commenced, Hunter told another trader that he had "4000 to sell MoC ... Shhh." In response, the trader stated, "unless you are huge bearish position, why the f would you do that." Hunter explained that it was a "bit of an exp[e]riment mainly."¹⁶¹

92. During the February 24, 2006 settlement period, Amaranth sold nearly 3,000 March 2006 NG Futures Contracts (at a time when it held 14,005 short swaps on ICE and

¹⁵⁷ Ex. S-39.

¹⁵⁸ Ex. S-42.

¹⁵⁹ Ex. S-45. *See also* Tr. 281-82 (Hunter).

¹⁶⁰ Ex. S-46; Tr. 414-16 (Hunter).

¹⁶¹ Ex. S-47.

Clearport).¹⁶² Midway through the period, Hunter observed that “today came together quite nicely.” And at 2:30 p.m., he sent a price curve to Donohoe, which predicted that the settlement price would be \$7.15. Donohoe thought the settlement price would be “lower,” making the settlement period the “2nd best ... sept/oct last year still the best.”¹⁶³ Hunter remarked in celebratory fashion, “I’m flexing here.”¹⁶⁴

93. Hunter contends that he had a legitimate business motive for his trading. He asserts that there was a significant contraction of the March/April spread due to unusual buying pressure during the two minute options settlement period on February 23, 2006. He claims to have believed that this aggressive buying of NG Futures Contracts would be repeated during the February 24 settlement period. This demand, in turn, would create upward pressure on the bid/offer spread. Hunter hoped to exploit this by selling futures ratably over the thirty-minute period, which he felt would garner an average price that was several cents higher than the settlement price – i.e., beat the close. The goal of the experiment was to “make a little bit of money and gain some valuable knowledge about the settlement process.”¹⁶⁵

94. The ALJ found that this explanation lacked credibility, suffered from “several anomalies,”¹⁶⁶ and amounted to an “*ex post facto*” justification that was “solely intended to obfuscate the truth.”¹⁶⁷ These findings were based on a thorough consideration of the evidence and arguments presented by the parties. The Commission therefore affirms the ALJ’s credibility determinations and finds that the evidence does not support Hunter’s contention that his February trading was driven by the proffered business reason.

95. Initially, Hunter’s explanation fails to take into account the substantial short swap position he maintained on the ICE and Clearport platforms – a position that increased from 11,943 to 14,005 on February 24, 2006.¹⁶⁸ That position would be significantly harmed if the buying pressure (and resulting increase in the settlement price) that Hunter purportedly hoped for did in fact emerge during the February 24 settlement period. The

¹⁶² Initial Decision at P 62, 64.

¹⁶³ Ex. S-55.

¹⁶⁴ Ex. S-55. *See also* Tr. 432-36 (Hunter); Initial Decision at P 149.

¹⁶⁵ Brief on Exceptions at 57. *See also* Initial Decision at P 153.

¹⁶⁶ Initial Decision at P 160.

¹⁶⁷ Initial Decision at P 167.

¹⁶⁸ Initial Decision at P 62.

Commission finds it illogical that Hunter would devise a strategy intended to take advantage of a higher settlement price – in order to just “make a little bit of money”¹⁶⁹ – when a higher settlement price would significantly reduce the value of his short swap position, especially when Hunter was simultaneously expanding that short swap position. And we agree with the ALJ that “it seems odd” that Hunter’s testimony regarding this strategy made no mention of his short swap position, which would plainly be affected.¹⁷⁰ The absence of such testimony is particularly curious in light of Hunter’s repeated assertion that “[e]verything that matters is the portfolio. It’s the portfolio of trades that matters.”¹⁷¹

96. The Commission also agrees with the ALJ’s conclusion that the credibility of Hunter’s explanation is further diminished because it appears to make little economic sense.¹⁷² The ALJ explained that Hunter’s strategy consisted of “two bets.” One consisted of Hunter’s effort to the beat the close by acquiring 3,000 EFS positions.¹⁷³ Gains on EFS transactions are measured by the difference between the weighted average sales price of the futures and the volume-weighted average price of the swaps. In order to profit, therefore, Hunter would have to sell the futures leg of the EFS positions at prices that exceeded, on average, the volume-weighted average price – i.e., when futures prices are relatively high.¹⁷⁴ But Hunter testified that he instructed his broker to sell ratably over the close.¹⁷⁵ There is no statistical basis to expect that such sales would

¹⁶⁹ Brief on Exceptions at 57. *See also* Tr. 714, 719 (Hunter).

¹⁷⁰ Initial Decision at P 160.

¹⁷¹ Tr. 701 (Hunter). *See also* Brief on Exceptions at 52 (“the price of every contract mattered to Hunter on a daily basis”); Initial Decision at P 165 (noting that Hunter’s explanation “contradicts his defense that he only focused on his overall book and was never concerned with one-day price movements and trading in the front month contract”).

¹⁷² Initial Decision at P 161.

¹⁷³ An EFS transaction is a privately negotiated exchange of a position in physical delivery futures contracts for a cash-settled swap in the same or related commodity. Initial Decision at P 54 n.35. Hunter obtained NG Futures Contracts through EFS transactions by “buying the future and selling the swap.” Tr. 682 (Hunter). This left Hunter with a long position in 3,000 NG Futures Contracts and a 3,000 short swap position. Brief on Exceptions at 59 n.27.

¹⁷⁴ Initial Decision at P 156. *See also* Tr. 468, 724-36 (Hunter).

¹⁷⁵ Initial Decision at P 157 (quoting Tr. 745-46 (Hunter)).

consistently yield prices in excess of the settlement price.¹⁷⁶ Hunter admits this mathematical fact.¹⁷⁷

97. Moreover, the EFSs were purchased at a 2 cent premium, meaning that the futures purchase price exceeds the swap sale price by 2 cents. In order to make “a few cents,” Hunter’s ratable sales thus would have to beat the settlement price by more than 2 cents.¹⁷⁸ But Hunter only expected the bid/ask spread to be about 3 cents, at most, leaving 1.5 cents between the average prices and the highest offers.¹⁷⁹ Even if all of Hunter’s ratable sales exceeded the prevailing prices, he could only beat the settlement by about 1.5 cents, leaving him 0.5 cents short of even recouping the premium.¹⁸⁰ The Commission therefore affirms the ALJ’s conclusion that Hunter’s purported trading strategy was “unlikely to succeed.”¹⁸¹

98. The second bet in Hunter’s strategy consisted of the 1,800 March/April spread, created by the purchase of 1,800 March 2006 NG Futures Contracts and the sale of the

¹⁷⁶ As the ALJ explained, if total sales are distributed evenly over the settlement period, the volume-weighted average price is equal to the average price. Thus, a seller selling ratably would essentially replicate the volume-weighted average price. Initial Decision at P 158 n.77. *See also id.* at P 161 (“selling ratably yields roughly an unweighted-average of the prices observed over the close, and there is no statistical reason to expect this to consistently exceed the weighted average price”).

¹⁷⁷ Initial Decision at P 158 (quoting Hunter’s Answer in Opposition to Order to Show Cause, filed Dec. 14, 2007, at 22) (“because Hunter had no way of knowing exactly when within the closing range that aggressive buying would occur, Hunter designed the sales to be generally ratable over the closing range. Otherwise, if Amaranth were to have sold over only a portion of the closing range, it would risk obtaining an average sales price that was significantly less than the volume-weighted average price over the entire close.”).

¹⁷⁸ Tr. 466-67, 699-700 (Hunter); Ex. 168.

¹⁷⁹ Tr. 469 (Hunter).

¹⁸⁰ Tr. 469, 714-15 (Hunter).

¹⁸¹ Initial Decision at P 168.

same number of April 2006 NG Futures Contracts.¹⁸² The ALJ described this transaction as “a bet that the price of the March 2006 natural gas contract [would] increase relative to that of the April 2006 contract.”¹⁸³ Hunter contends that he undertook this trade to move his March 1,800 futures position forward to April and was “indifferent to the price movement of the March/April spread” after the sale of the March 2006 NG Futures Contracts.¹⁸⁴ The record, however, contradicts this explanation. At the end of the settlement period on February 24, Donohoe advised Hunter that the “H [the March 2006 NG Futures Contracts] will” settle “lower” and the “h/j spread [March-April spread] wider.” Donohoe remarked “nice,” and Hunter celebrated by noting “I am flexing here,” followed by “rrrr.”¹⁸⁵ These contemporaneous documents demonstrate that Hunter was not indifferent to declines in the March settlement price and the widening March/April spread. In the face of these documents, Hunter’s contention on exceptions amounts to a post-hoc attempt to explain his February trading conduct.

99. The Commission rejects Hunter’s contention that the ALJ failed to consider contemporaneous documents that purportedly support Hunter’s proffered explanation for his February 24, 2006 trading.¹⁸⁶ The ALJ exhaustively catalogued and evaluated the contemporaneous documents offered as evidence, and considered those documents in the context of the record. The fact that the ALJ did not credit Hunter’s construction of these documents does not mean that they were ignored. Rather, the ALJ found that Hunter’s claimed interpretation of those documents was not credible, and the Commission agrees.

100. For instance, Hunter argues that an instant message exchange with another trader – which references “all options from yesterday” – supports his claim that the decision to sell futures in the February 24 settlement period related to the options rally observed the previous day. The ALJ, however, looked at other parts of the instant message exchange, including Hunter’s statements that “we have 4000 to sell MoC”, followed by “Shhh,” and independently evaluated the entire exchange to find that it was additional evidence of Hunter’s manipulative intent.¹⁸⁷ Indeed, it is Hunter who ignores numerous

¹⁸² Initial Decision at P 155, 161. *See also* Tr. 683-84, 686 (Hunter).

¹⁸³ Initial Decision at P 161.

¹⁸⁴ Brief on Exceptions at 59.

¹⁸⁵ S-55. *See also* Tr. 434-47 (Hunter).

¹⁸⁶ Brief on Exceptions at 57-58.

¹⁸⁷ Initial Decision at P 149. As the ALJ noted, if Hunter expected buying pressure on February 24, it would have been reasonable for him to delay his sales until that pressure occurred, instead of deciding in advance to sell ratably over the settlement period. *Id.* at P 169.

contemporaneous statements indicating that, in fact, he expected the settlement price for March 2006 NG Futures Contracts to decline due to selling pressure. Hunter's instant messages reveal that he believed there were "futures sellers everywhere;" felt a larger trader was positioned for a "punch down" not "protecting up;" thought the settlement price would go "lower" and "down" and that "H [March] will go off soft."¹⁸⁸

101. In sum, the record demonstrates that Hunter (1) believed the NYMEX settlement price could be manipulated; (2) understood that his positions on ICE and Clearport would benefit from a lower NG Futures Contract settlement price; (3) sold a significant volume of NG Futures Contracts during the settlement period (despite being advised to reach a "flat" position prior to the expiration day); (4) employed a trading strategy that differed significantly from that utilized in prior periods; and (5) possessed a financial motive to drive down the NG Futures Contract settlement price. The record further demonstrates that Hunter's proffered business justification for his trading lacks credibility.

v. March trading

102. The Commission affirms the ALJ's determination that Hunter intentionally manipulated the settlement price of the April 2006 NG Futures Contracts by selling a significant quantity of such contracts during March 29, 2006 in order to lower the settlement price so as to benefit his short swap positions on other trading platforms.¹⁸⁹

103. Hunter contends the record is devoid of evidence that he played any role in trading during the settlement period, which occurred when he was on vacation in the Maldives and virtually incapable of communicating with Amaranth's offices.¹⁹⁰ The Commission disagrees. First, there was some communication between Hunter and Donohue during this period, although Hunter claims this was unrelated to trading.¹⁹¹ Second, the March trading mirrored that which took place in February and April – two months in which Hunter admittedly directed the trading at issue.¹⁹² Third, Hunter was responsible for Amaranth's natural gas book in March. And Donohoe did not have authority to determine Amaranth's trading strategy.¹⁹³ Instead, Donohoe executed orders on Hunter's

¹⁸⁸ See Exs. S-43, S-54, S-40, S-27; and Tr. 461-66 (Hunter).

¹⁸⁹ Initial Decision at P 170-72.

¹⁹⁰ Brief on Exceptions at 65-66.

¹⁹¹ Initial Decision at P 170.

¹⁹² Initial Decision at P 172.

¹⁹³ Initial Decision at P 171 (citing Tr. 911, 955, 957 (Donohoe)).

behalf. Fourth, there is no evidence suggesting that Donohoe traded against Hunter's wishes in March, or any other month, or otherwise exceeded his authority.¹⁹⁴ It is thus not credible to suggest that Donohoe developed and executed a trading strategy that involved the sale of, what was at the time, the second highest volume of NG Futures Contracts during the NYMEX settlement period in Amaranth's history on his own.¹⁹⁵

104. The Commission finds that the ALJ reasonably concluded that Hunter intentionally manipulated the settlement price of the April 2006 NG Futures Contracts in light of these findings and the "pattern of conduct" based on "what transpired the previous and the following month."¹⁹⁶

vi. April trading

105. The Commission affirms the ALJ's finding that Hunter intentionally manipulated the settlement price of the May 2006 NG Futures Contracts in order to benefit positions he held on other trading platforms. The record demonstrates that over the course of April, Amaranth reversed its large short position in May 2006 NG Futures Contracts. By the time it entered the April 26, 2006 expiration day, Amaranth held a long position in 3,044 futures contracts. At the same time, Amaranth was short approximately 16,902 swaps on ICE and Clearport, and held a net long June put option of 17,590 contracts (which is the functional equivalent of carrying a short position in swaps).¹⁹⁷ Amaranth once again began selling off large number of NG Futures Contracts during the settlement period. This time, however, the sales were concentrated in the last eight minutes of the settlement period. The ALJ found that Hunter's trading lowered the price of the May and June 2006 NG Futures Contracts (the latter of which is priced on the basis of the last two minutes of trading), which in turn benefitted his significant May and June short swap and option positions.¹⁹⁸

106. Hunter contends that his April trading was not motivated by an intent to manipulate, but rather was intended to implement senior management's directive to limit risk by reducing the size of Amaranth's natural gas portfolio.¹⁹⁹ According to Hunter, this would be accomplished by "legging out" of his spread positions through the sale of

¹⁹⁴ Initial Decision at P 171.

¹⁹⁵ Initial Decision at P 150.

¹⁹⁶ Initial Decision at P 171.

¹⁹⁷ Initial Decision at P 67.

¹⁹⁸ Initial Decision at P 174.

¹⁹⁹ Brief on Exceptions at 67.

long winter contracts while allowing his short May swaps to expire on April 26, 2006.²⁰⁰ The ALJ gave detailed consideration to Hunter's explanation. She found that the purported trading strategy was needlessly complex and failed to adequately account for the sale of May 2006 NG Futures Contracts during the settlement period.²⁰¹ Hunter contends that so long as he can produce a business motive for his trading, the ALJ is "without the power" to opine on that motive. But one of the ALJ's central tasks was to assess the credibility of Hunter's purported business justification. Observations regarding the needless complexity and cost associated with Hunter's purported strategy are pertinent when determining whether it is a persuasive explanation or an *ex post facto* creation. Here, the ALJ determined that Hunter's business justification for his trading strategy lacked credibility. The Commission agrees with this assessment.

107. Initially, Hunter could not adequately explain why May 2006 NG Futures Contracts were sold during the settlement period as part of his risk reduction strategy. On the stand, "Hunter would not admit that selling futures was part of a position reduction strategy," saying simply "I just said I sold futures in the close. That's all I'm going to say."²⁰²

108. The ALJ also found credibility problems with respect to other aspects of Hunter's explanation. For instance, the ALJ did not credit Hunter's contention that his decision to wait until the last eight minutes of the settlement period before selling the May 2006 NG Futures Contracts was driven by his efforts to dispose of his winter position. According to Hunter, he attempted to sell his winter positions throughout April 26 and only as the end of the trading day approached could he determine the number of summer swaps that would need to be expired (which could be offset with the sale of NG Futures Contracts).²⁰³ But the ALJ found, and the Commission agrees, that the record indicates that Hunter's sale of May 2006 NG Futures Contracts during the settlement period was not related to, or dependent upon, his sale of winter contracts. Some documents could be construed to reflect an effort to sell winter positions prior to the settlement period. The record demonstrates, however, that Amaranth primarily attempted to sell its winter

²⁰⁰ Initial Decision at P 175. There are five "winter" months (November through March) and seven "summer" months (April through October), which coincide with the natural gas storage injection and withdrawal seasons. *Id.* at P 59 n.36.

²⁰¹ Initial Decision at P 176, 181.

²⁰² Initial Decision at P 176 (Tr. 894-95 (Hunter)).

²⁰³ Initial Decision at P 183.

position during the settlement period.²⁰⁴ As the ALJ found, “Donohoe was trying to sell winter seven minutes before the settlement period expired, which was after Amaranth had placed its order to sell futures in the last eight minutes of the settlement period.”²⁰⁵ The ALJ reasonably inferred from this evidence that “there was no relationship between selling winter in the close and selling futures within the last eight minutes of the close.”²⁰⁶

109. Hunter contends that the ALJ’s scienter finding is undermined by the fact that “[w]aiting until the last eight minutes to sell the futures contract was the absolute worst thing he could have done” in light of a trade made earlier in the day which would lose money if the June settlement price went down by more than the May settlement price.²⁰⁷ But this claim ignores the entirety of Hunter’s portfolio. And as the ALJ found, “Hunter misrepresented his June position on the witness stand.”²⁰⁸ Rather than having a long June position (which would be harmed by a lower settlement price), the evidence shows that Hunter was short in both May and June (which would benefit as a result of a lower settlement price).²⁰⁹

110. In addition, while Hunter claims his strategy was intended to reduce his portfolio, the ALJ concluded that the record reveals “little evidence of trimming” of Hunter’s

²⁰⁴ See, e.g., RES-20-27 (Donohoe attempting to sell winter length “five minutes before the end of the close and 15 minutes before the end of the close). See also Initial Decision at P 183 (citing Exs. RES-20-47, 20-48, 20-49; Tr. 1030-34 (Donohoe)).

²⁰⁵ Initial Decision at P 183.

²⁰⁶ Initial Decision at P 183.

²⁰⁷ Brief on Exceptions at 74.

²⁰⁸ Initial Decision at P 185.

²⁰⁹ Initial Decision at P 185 (citing Tr. 798 (Hunter)). Hunter also points to an instant message stating he is a “touch worried about a lower close.” (RES-19-46; Tr. 821-23 (Hunter).) He contends this evidence is not addressed by, and undercuts the findings in, the Initial Decision. (Brief on Exceptions at 75.) But the ALJ did in fact note this instant message exchange. She concluded that Hunter’s testimony regarding this exchange, in which “he states he was quite long in June” and thus “a touch worried about a lower close” was false and misleading. (Initial Decision at P 185.) In fact, Hunter was short in both May and June. As a result, “lower May and June prices would benefit these positions.” (*Id.*)

portfolio.²¹⁰ In fact, the evidence establishes that Amaranth's natural gas positions generally increased in size between March and September 2006.²¹¹ Hunter argues that the ALJ (and the Commission) should ignore this evidence because it purportedly has "nothing to do with whether Hunter's stated business reason for selling the futures on April 26 was legitimate."²¹² The Commission disagrees. The crux of Hunter's purported business justification for his April trading is that he was attempting to reduce his portfolio in an effort to comply with a directive from Amaranth management. The fact that Hunter's portfolio continued to grow is difficult to reconcile with Hunter's purported business justification for his April 26 trading and bears upon the credibility of that justification.²¹³

111. In summary, the Commission agrees with the ALJ's finding that the preponderance of the evidence demonstrates that Hunter traded with an intent to manipulate the NG Futures Contracts settlement price during the at-issue settlement periods in order to benefit his positions on other trading platforms.

3. In Connection With the Purchase or Sale of Jurisdictional Natural Gas

a. The Initial Decision

112. The ALJ found that there is a close interplay between the NG Futures Contract settlement price and physical gas transactions, and that Hunter was aware of this connection. The ALJ therefore concluded that Hunter acted with reckless disregard as to the impact his trading conduct would have upon FERC-jurisdictional transactions, thus satisfying the third element of the Anti-Manipulation Rule.²¹⁴

113. The evidence before the ALJ established that some NG Futures Contracts "go to delivery," with the contracting parties making or taking delivery of physical natural gas. Here, 1,697 NG Futures Contracts went to delivery in March 2006, 1,230 contracts went

²¹⁰ Initial Decision at P 188.

²¹¹ Initial Decision at P 188 (citing Staff Demonstrative Exs. 49-51).

²¹² Brief on Exceptions at 76.

²¹³ Initial Decision at P 187 ("observing the book increase subsequent to the expiration without explanation ... [renders] another aspect of Hunter's explanation ... not credible").

²¹⁴ Initial Decision at P 205, 208-09.

to delivery in April 2006, and 1,748 contracts went to delivery in May 2006.²¹⁵ The NG Futures Contract settlement price for the relevant months set the price for these physical transactions.²¹⁶ The ALJ found that a trader entering the NG Futures market during times of manipulation with the intent to go to delivery clearly would be affected by the manipulation.

114. The ALJ also explained that the NG Futures Contracts settlement price constitutes the largest component of the price utilized in physical basis contracts, which are contracts widely used for monthly physical delivery in North America. The evidence established that these contracts generally use the NYMEX settlement price plus a negotiated difference in price or basis, which is negotiated before the NG Futures Contract settlement price is known. And some go to delivery based solely on the settlement price.²¹⁷

115. The ALJ further determined that the NG Futures Contract settlement price affects index-based contracts. Publishers compile a volume-weighted average price on the basis of surveys of natural gas transactions (including physical basis transactions) at certain locations during the “bid week,” which is the last week of the month. The resulting index price is utilized by a significant number of market participants to buy or sell natural gas. As the ALJ recognized, Commission data collected through FERC Form 552 demonstrates that physical gas market participants rely heavily on index pricing.²¹⁸

116. The ALJ found that Hunter was well aware of the interplay between the physical and financial natural gas markets. She specifically concluded Hunter knew that: (1) some NG Futures Contracts went to delivery; (2) the NG Future Contract settlement price sets the price of physical gas transactions; (3) physical basis transactions utilize the NG Futures Contract settlement price as a major pricing component; and (4) industry

²¹⁵ See Ex. S-1 at 39 (Kaminski).

²¹⁶ Initial Decision at P 206 (citing Ex. S-1 at 39-40 (Kaminski); NYMEX Rule 220.11(D); Tr. 1470-71 (Billings)). The ALJ explained that “the NYMEX price determines whether money is placed into or withdrawn from a margin account for the futures that go to delivery (true up). The future’s price and delivery price is the price negotiated at the time the futures contract was purchased.” *Id.* at P 206 n.95.

²¹⁷ Initial Decision at P 207 (citing Exs. S-1 at 40, 42-43 (Kaminski); S-3 at 4-5 (Billings); Tr. 1465 (Billings); Tr. 1762 (De Laval)).

²¹⁸ Initial Decision at P 208 (citing Exs. S-1 at 42-47 (Kaminski); S-3 at 6-7 (Billings); S-3-3 at 3; S-214-16; Tr. 1445-54, 1460-61, 1464-65 (Billings)).

publications, such as Inside FERC and Natural Gas Intelligence, utilize the NG Futures Contract settlement price as a component of the price for basis transactions.²¹⁹

b. Hunter's Position on Exceptions

117. Hunter contends that the “in connection with” requirement has not been met because the ALJ did not find that there was an artificial price in the physical natural gas market. Nor was there, in Hunter’s view, sufficient evidence to establish any real connection between the NG Futures Contracts settlement price and prices in the physical market. He also argues that the ALJ relied on inadmissible evidence to find a connection between the NG Futures Contract settlement price and index priced transactions, and contends that contracts that go to delivery are fixed price transactions that are unaffected by the NG Futures Contract settlement price. Hunter further contends that the record fails to establish that he acted recklessly with respect to FERC-jurisdictional transactions because there is insufficient evidence to conclude that he was aware of the workings of the physical natural gas market.²²⁰

c. Commission Analysis

118. The Commission affirms the ALJ’s finding that Hunter’s manipulative conduct occurred “in connection with” FERC jurisdictional transactions. This element is satisfied where, as the ALJ found here, the manipulator “intended to affect, or [] acted recklessly to affect, a jurisdictional transaction.”²²¹ It need not be shown that the “manipulator’s principal or exclusive purpose is the manipulation of physical natural gas sales.”²²² Rather, “the Anti-Manipulation Rule applies where there is a ‘nexus’ between the manipulative conduct and the jurisdictional transaction.”²²³

119. With respect to the nexus between Hunter’s conduct and FERC-jurisdictional transactions, the Commission agrees with the ALJ’s determination that: (1) 4,675 NG Futures Contracts went to delivery during the months in question and utilized the NG

²¹⁹ Initial Decision at P 209-210 (citing Tr. 299, 444, 448-49, 453-54 (Hunter)). *See also id.* P 209 (noting that Dr. Quinn acknowledged that physical gas prices and NG Futures Contract settlement prices are correlated).

²²⁰ Brief on Exceptions at 78-84.

²²¹ Order No. 670 at P 22.

²²² 2007 Rehearing Order at P 22.

²²³ 2007 Rehearing Order at P 22. *See also SEC v. Zandford*, 535 U.S. 813, 822 (2002) (“in connection with” requirement in § 10(b) is satisfied where “the scheme to defraud and the sale of the securities coincide”).

Futures Contract settlement price as a basis for pricing the physical delivery obligations; (2) the settlement price for NG Futures Contracts is incorporated into physical basis contracts as the largest (or even sole) price component; and (3) the NG Futures Contracts settlement price is incorporated into pricing indices utilized in physical basis transactions.²²⁴ Given the interconnections between the futures market and the physical market, any manipulation of the settlement price of NG Futures Contracts would affect FERC-jurisdictional transactions.²²⁵ And here, the ALJ found that Hunter's manipulative scheme did, in fact, affect the NG Futures Contract settlement price.²²⁶

120. Hunter disputes the nexus between the NG Futures Contract settlement price and physical transactions by pointing to testimony indicating that the settlement price is not necessarily a reference point relied on by traders who are executing real-time transactions in the physical market. But this testimony is largely irrelevant to the ALJ's findings, which do not presume that traders necessarily relied on the NG Futures Contract settlement price in real-time trading. And it thus does not weaken the links between the futures market and physical market found by the ALJ. The Commission also rejects Hunter's assertion that NG Futures Contracts that go to delivery are fixed-price contracts that are unaffected by the settlement price. As the ALJ explained, "the economic impact of the settlement price is either beneficial or detrimental to market participants who entered or exited the market during the period of manipulation by virtue of the true up of the settlement price *vis a vis* their margin accounts."²²⁷

121. The ALJ's conclusion that Hunter acted with reckless disregard as to the impact of his conduct upon FERC-jurisdictional transactions is also well-supported by the record. Hunter testified that he knew some NG Futures Contracts went to delivery, and that the NYMEX rules provide that the NG Futures Contracts settlement price set the basis for such physical delivery obligations.²²⁸ Hunter also testified that NG Futures Contract

²²⁴ Initial Decision at P 206-208; Ex. S-1 at 39 (Kaminski).

²²⁵ We reject Hunter's assertion that, in determining the link between the NG Futures Contract settlement price and pricing indices utilized in the physical markets, the ALJ inappropriately admitted two survey exhibits which purportedly lacked foundation. Notably, Hunter raises no issue with respect to the content of the surveys. His arguments regarding their admissibility were raised before, and rejected by, the ALJ. We hereby affirm that decision. *See, e.g., Enbridge Pipelines (KPC)*, 102 FERC ¶ 61,310, at 62,028 (2003) (admitting relevant documents without sponsoring witness).

²²⁶ Initial Decision at P 143 n.64.

²²⁷ Initial Decision at P 210 n.102.

²²⁸ Tr. 444, 448-49 (Hunter). *See also* Initial Decision at P 209.

settlement prices are utilized as a basis for determining the price for physical basis transactions.²²⁹ Further, in August 2006, Amaranth wrote to NYMEX to express concern about trading in the September 2006 NG Futures Contracts. At the time, Hunter was the company's head natural gas trader. In the letter, Amaranth acknowledged that the settlement price is "a key price benchmark for physical and financial contracts involving natural gas," and that when the settlement price is not the result of supply and demand, market participants and the consuming public are harmed.²³⁰

122. The Commission therefore affirms the ALJ's conclusion that there is a nexus between the settlement price for NG Futures Contracts and the purchase or sale of jurisdictional natural gas. The Commission also affirms the ALJ's determination that Hunter acted recklessly with regard to the effect his conduct would have on such jurisdictional transactions.

D. Civil Penalty Determination

123. Section 22 of the Natural Gas Act provides that any party who violates the Act, or any rule promulgated thereunder, "shall be subject to a civil penalty of not more than \$1,000,000 per day per violation for as long as the violation continues."²³¹ 15 U.S.C. § 717t-1(a). In the Order to Show Cause, the Commission proposed that Hunter be assessed a civil penalty of \$30,000,000.²³² In setting this matter for hearing, the Commission advised that it would determine whether civil penalties should be imposed based on the record established before the ALJ.²³³

a. The Initial Decision

124. Based on the record before her, the ALJ determined that Hunter intentionally manipulated the price of NG Futures Contracts, which in turn affected FERC-jurisdictional transactions. The ALJ found that Hunter, who held an executive level position, knew that his conduct was improper and prohibited by Amaranth's compliance

²²⁹ Tr. 451-54 (Hunter). *See also* Initial Decision at P 210. While Hunter's Brief on Exceptions (at 83-84) argues that this testimony did not concern "physical basis transactions" as used throughout this case, we defer to the ALJ's understanding of Hunter's testimony, in light of her ability to view that testimony first-hand.

²³⁰ Ex. S-166. *See also* Initial Decision at P 208 n.100.

²³¹ 15 U.S.C. § 717t-1(a).

²³² Order to Show Cause at P 138.

²³³ Hearing Order at P 14.

manuals. The ALJ further found that “Hunter ha[d] not been forthright with this tribunal. [Th]e explanations of his conduct [were] not credible and amount[ed] to after-the-fact defenses of his actions.”²³⁴ Indeed, the ALJ made more than ten adverse credibility determinations with respect to Hunter’s testimony.²³⁵

125. The ALJ determined that Hunter’s manipulative conduct harmed the futures market by diluting price discovery and hedging, which depend on market fundamentals and valid predictions about future values. She also found that Hunter’s conduct harmed participants in the physical markets: producers who sold natural gas during March, April and May 2006 at prices based on the NG Futures Contract settlement price were paid less than the true market price for their gas.²³⁶

126. With respect to mitigating factors, the ALJ observed that Hunter had not previously violated the Commission’s rules. On the other hand, Hunter made no effort to self-report the violation. The ALJ also noted Enforcement Litigation Staff’s claim that Hunter was uncooperative during the investigation. She concluded that Hunter deserved no credit that would warrant a reduction of his penalty.²³⁷

b. Hunter’s Positions on Exceptions

127. Hunter claims that Enforcement Litigation Staff failed to introduce any evidence regarding the penalty factors articulated in the Commission’s policy statements.²³⁸ He argues that there is no evidence demonstrating that his conduct, even if it could be deemed to be manipulative, was willful.²³⁹ He contends that he did not believe that it was possible to use futures contracts (as opposed to swaps or other instruments) to move the settlement price of the expiring contract in the settlement period of the expiration day. Hunter further asserts that no penalty assessment can consider Amaranth’s compliance manual – which explicitly prohibited traders from “engag[ing] in ‘marking the close’ at or near the close of trading for the primary purpose of attempting to change the closing

²³⁴ Initial Decision at P 212 (citing Tr. 449-50 (Hunter)).

²³⁵ *See, e.g.*, Initial Decision at P 148 n.68, 163, 165, 169, 170, 172, 179, 183, 184, 186, 187, 188.

²³⁶ Initial Decision at P 213 (citing Ex. S-1 at 53-55 (Kaminski); Tr. 913-20 (Donohoe); Ex. S-10 at 12-13 (Kaminski)).

²³⁷ Initial Decision at P 214.

²³⁸ Brief on Exceptions at 84-87.

²³⁹ Opposition to Staff’s Memorandum Addressing Penalty Issues Reserved To The Commission (Hunter Penalty Memorandum), filed Mar. 24, 2010, at 3-6.

price to protect or alter the value of an existing position”²⁴⁰ – because Enforcement Litigation Staff purportedly failed to elicit testimony regarding the meaning and application of the relevant portions of the manual.²⁴¹

128. Hunter also asserts that Enforcement Litigation Staff failed to prove that his conduct, even if manipulative, caused any harm to FERC-jurisdictional markets. He contends that the record is devoid of evidence regarding harm to participants in the physical gas markets, as opposed to “theories” regarding how price manipulation “could” harm those markets. He notes that Enforcement Litigation Staff did not present a single transaction for physical natural gas impacted by the asserted manipulation, nor any analysis isolating the alleged impact of the manipulation on the price of gas in the physical markets. Hunter further contends that there was no record evidence establishing that he personally benefited from the challenged trades (as opposed to any unjust profits reaped by Amaranth).²⁴²

129. Hunter further contends that there is no evidence in the record that he can afford to pay the proposed \$30,000,000 penalty. He also asserts that he fully cooperated with Enforcement Litigation Staff’s investigation. Hunter maintains that, despite residing in a foreign country, he voluntarily sat for four days of depositions by various agencies and answered all questions put to him, and then testified for four days at the hearing of this matter.²⁴³

130. With respect to the amount of the proposed penalty, Hunter contends that the Commission alleged, and Enforcement Litigation Staff sought to prove, only three individual violations of the Natural Gas Act – one for each allegedly manipulated NYMEX settlement price.²⁴⁴ Thus, in Hunter’s view, a civil penalty cannot exceed \$3,000,000 (\$1,000,000 for each of the three at-issue settlement periods).

131. Hunter takes issue with the assertion in the Order to Show Cause that each of Amaranth’s 219 floor transactions (or “fills”) constitutes a separate violation of the Anti-Manipulation Rule. Hunter argues that he had no control over the number of fills used to execute his orders. Moreover, in Hunter’s view, the record fails to demonstrate the requisite showing that each floor transaction had an independent impact upon the

²⁴⁰ Ex. S-175.

²⁴¹ Hunter Penalty Memorandum at 5.

²⁴² Hunter Penalty Memorandum at 7-8.

²⁴³ Hunter Penalty Memorandum at 8-9.

²⁴⁴ Hunter Penalty Memorandum at 9-13.

settlement price during the at-issue expiration days. He contends that the theory alleged in the Order to Show Cause is that the trades in the aggregate on the three at-issue expiration days had an impact upon the NG Futures Contract settlement price. And thus the record at most supports a finding of only three violations.²⁴⁵

c. Commission Analysis

132. In 2005, the Commission issued its Enforcement Policy Statement, which identified a series of factors to be considered in assessing the seriousness of alleged statutory violations, and any mitigating factors that may bear upon the amount of any civil penalty assessment.²⁴⁶ In 2008, the Commission issued a Revised Enforcement Policy Statement, which made certain clarifications to the Commission's existing policies in light of its experience in applying the enhanced enforcement tools provided by the EAct of 2005.²⁴⁷

133. In considering an appropriate penalty in this case, the Order to Show Cause relied upon the 2005 Enforcement Policy Statement. In his submissions, Hunter cites to the Revised Enforcement Policy Statement. The Commission does not believe that the Revised Enforcement Policy Statement materially alters the analysis here, and will address factors identified in both below.

i. Number of violations

134. Initially, the Commission rejects Hunter's assertion that the evidence only supports a finding of three violations of the Anti-Manipulation Rule. The Natural Gas Act states that "[t]he nature, timing and numerosity of violation(s) will depend on the facts and circumstances of each case."²⁴⁸ In the Order to Show Cause, the Commission explained that execution of Hunter's orders to sell the NG Futures Contracts at issue were essential acts that affected the settlement price.²⁴⁹ In Hunter's view, it is inequitable to use these "fills" to determine the number of violations because the manner in which his

²⁴⁵ Hunter Penalty Memorandum at 10-13.

²⁴⁶ Enforcement Policy Statement, 113 FERC ¶ 61,068 (2005).

²⁴⁷ Revised Enforcement Policy Statement, 123 FERC ¶ 61,156 (2008). The Commission also recently issued a *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010). This policy statement is not applicable here since it does not apply to natural persons, or where the parties have engaged in settlement discussions. *Id.* P 59, 62.

²⁴⁸ Order to Show Cause at P 115.

²⁴⁹ Order to Show Cause at P 116-17.

sell orders were executed – i.e., the number of fills utilized – was entirely within the broker’s discretion. But even if Hunter is correct, that does not establish that only three violations took place. The “fills” are the mechanism utilized to carry out Hunter’s instruction to sell the 6,798 NG Futures Contracts at issue in this case.²⁵⁰ It was the sale of these contracts during the at-issue settlement periods that effectuated Hunter’s manipulative trading strategy. The sale of each individual contract played a role in “exert[ing] downward pressure” on the settlement prices during the relevant expiration days.²⁵¹ Those settlement prices, in turn, served as a major component in the pricing of physical gas transactions.

135. The Commission thus finds that Hunter’s sale, with manipulative intent, of each NG Futures Contract during the at-issue settlement periods constitutes a separate violation of the Anti-Manipulation Rule. Utilizing the NG Futures Contracts as a basis for determining the number of violations is consistent with the manner in which other regulators have counted violations related to manipulative schemes.²⁵² And the case law cited by Hunter does not counsel otherwise.²⁵³ Thus, whether violations are counted on the basis of the fills or the NG Futures Contracts utilized in Hunter’s manipulative

²⁵⁰ Exs. S-1 at 21 (Kaminski); S-11 at 10-17 (King).

²⁵¹ Initial Decision at P 142 n.64.

²⁵² See, e.g., *SEC v. Cavanagh*, No. 98 Civ. 1818 (DLC), 2004 U.S. Dist. LEXIS 13372, at *104-05 (S.D.N.Y. 2004) (noting SEC’s request for a civil penalty for “each sale or offer to sell” in connection with manipulative scheme); *SEC v. Coates*, 137 F. Supp. 2d 413, 430 (S.D.N.Y. 2001) (finding that each misrepresentation constituted a separate violation); *SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d. 1, 17 (D.D.C. 1998) (assessing civil penalty on the basis of the number of investors harmed by a manipulative scheme); *In re Maria T. Giesige*, No. 3-12747, 2009 SEC LEXIS 1756, at *27 (2009) (“Giesige made numerous and repeated misstatements and omissions to each of her approximately fifty customers ... and the Commission has the authority to assess a penalty for each of these individual violations”); *In re John Carley*, No. 3-11626, 2008 SEC LEXIS 222, at *114, n.157 (2008) (“we note that each of the numerous unregistered sales of Starnet stock ... could be considered a separate violation of the Securities Act”); *In re Mark David Anderson*, 56 S.E.C. 840, 863, 2003 SEC LEXIS 1935 (Aug. 15, 2003) (imposing a civil penalty for each of the respondent’s ninety-six violative trades).

²⁵³ *McCaskey v. SEC*, 98 Civ. 6153 (SWK), 2002 U.S. Dist. LEXIS 4915, at *50 n.21 (S.D.N.Y. Mar. 26, 2002) (“McCaskey’s many trading violations,” in connection with a manipulation scheme conducted through multiple accounts, “clearly qualify for the \$100,000 total penalty requested by the SEC”), *SEC v. Tanner*, 02 Civ. 0306 (WHP), 2003 U.S. Dist. LEXIS 11410, at *8 (S.D.N.Y. July 3, 2003) (finding that defendants committed multiple “violations” in connection with their manipulative scheme).

scheme, the resulting number of violations is more than sufficient to support the penalty imposed by the Commission.

ii. Factors applied in determining penalty measures

136. “In determining the amount of a proposed penalty” for Hunter’s multiple violations, section 22 of the Natural Gas Act directs the Commission to “take into consideration the nature and seriousness of the violation and efforts to remedy the violation.”²⁵⁴ Consistent with this statutory directive, the Revised Enforcement Policy Statement on Enforcement identified five factors the Commission may consider in determining the amount of any civil penalty: (1) seriousness of the offense, (2) commitment to compliance, (3) self-reporting, (4) cooperation, and (5) reliance on staff guidance.²⁵⁵

(a) Seriousness of the violation

137. The Revised Enforcement Policy Statement identifies a number of issues to be considered when analyzing the seriousness of violations of the Natural Gas Act. Such consideration establishes that Hunter’s violations were extremely serious and thus warrant a significant penalty.

138. *Harm Caused by the Violations.* As we have previously found, there is a close relationship between the natural gas futures market and physical market. Hunter’s manipulation of the NG Futures Contract settlement price had a direct and substantial impact upon (1) those 4,675 NG Futures Contracts that went to delivery during the months in question, (2) physical basis contracts that incorporated the manipulated settlement prices, and (3) pricing indices utilized in physical basis transactions during the at-issue months.²⁵⁶

139. Hunter’s conduct had an impact on the physical natural gas market. For instance, the NG Futures Contracts that went to delivery during the at-issue months represent significant volumes of natural gas that, when converted to electricity, would be sufficient

²⁵⁴ 15 U.S.C. §717t-1(c).

²⁵⁵ 123 FERC ¶ 61,156, at P 54-71. The Commission agrees with Hunter that the staff guidance factor does not apply in this case because Hunter did not seek such guidance. Contrary to Hunter’s assertions, however, self-reporting and cooperation are pertinent here. These factors apply to individuals and corporate entities alike, *id.* at P 20, and are important considerations.

²⁵⁶ Initial Decision at P 206-208; Ex. S-1 at 39 (Kaminski).

to power over seven million homes for an hour.²⁵⁷ In February 2006, physical basis trades “represented 54.1% of the total volume and 53.4% of the number of deals” in those market locations utilizing physical basis deals.²⁵⁸ There is thus no doubt that Hunter’s conduct was felt by a significant portion of physical natural gas market participants. In short, many producers who sold natural gas based on the NG Futures Contract settlement price as a price benchmark were paid significantly less than the market price for their gas.²⁵⁹

140. Hunter’s conduct also harmed the efficient and transparent functioning of the market. As Dr. Kaminski explained:

[a]ny price manipulation, whether upward or downward, undermines the confidence of the market participants in the efficiency and fairness of the pricing mechanisms. This, in turn, affects adversely the ability and willingness of the producers and end-users to use risk management tools and makes sound investment decisions more difficult. In the long run, larger risks translate into higher costs that are either passed to consumers and/or absorbed by the producers.²⁶⁰

141. The ALJ determined that Hunter’s conduct was motivated by a desire to benefit his swap positions on other exchanges. Amaranth’s P&L reports on February 24th alone show a \$45,000,000 profit including substantial gains in individual strategies in the book that contained the positions that benefited from the lower settlement price.²⁶¹ And

²⁵⁷ Ex. S-1 at 39 (Kaminski).

²⁵⁸ Ex. S-1 at 46 (citing Supplemental Comments of Platts, Transparency Provisions of the Energy Policy Act of 2005, FERC Docket No. AD06-11-000, February 23, 2007.) According to Platts, “physical basis deals are utilized at 33 of 41 delivered-to-pipeline locations and at 14 of 22 market center locations.” *Id.* at 44 (citing FERC 2006 *State of the Markets Report* at p. 50 (2007), available at <http://www.ferc.gov/market-oversight/st-mkt-ovr/st-mkt-ovr.asp>)).

²⁵⁹ Initial Decision at P 213 (citing Tr. 913-920 (Donohoe); Ex. S-10 at 12-13 (Kaminski)).

²⁶⁰ Ex. S-1 at 53-55 (Kaminski). *See also* Initial Decision at P 213.

²⁶¹ Initial Decision at P 80, 152 (citing Exs. S-1-5, S-48; Tr. 437-39 (Hunter)). Hunter objects to the use of evidence regarding unjust profits garnered by Amaranth as support for the imposition of a civil penalty, contending that the Order to Show Cause did not provide notice that such evidence would be utilized in this fashion. *Id.* at 8 n.5. The Commission is not using evidence regarding Amaranth’s unjust profits as a metric for calibrating the amount of any civil penalty. Evidence of such gains, and how they may

(continued...)

Hunter stood to personally benefit from the manipulative scheme in light of the manner in which his compensation was structured.²⁶² Whether Hunter ultimately received any profits from his scheme does not bear upon the issue of harm. The key point is that any gains amassed as a result of Hunter's conduct resulted in pecuniary losses to other participants in the financial and physical markets during the at-issue months.

142. *Manipulation, Deceit, Fraud, and Recklessness or Indifference to Results of Actions.* Hunter's trading practices constituted an intentional manipulation of the settlement price of NG Futures Contracts. Hunter undertook this conduct fully aware of the close interconnection with the settlement price and physical natural gas transactions. As previously determined, he acted with reckless disregard as to the impact of his conduct upon FERC-jurisdictional transactions.

143. *Willful Action or in Concert with Others.* The record strongly indicates that Hunter knew that his conduct was improper²⁶³ and that his subsequent explanations for the trading were "ex post facto and solely intended to obfuscate the truth."²⁶⁴

144. *Actions by Senior Management.* Hunter was a Vice President of the Amaranth hedge fund and the President of Amaranth Calgary. He was responsible for the employees' understanding of, and compliance, with Amaranth's compliance manual, which explicitly prohibited "marking the close." Hunter's management position further supports a determination that his violations were serious.²⁶⁵

(b) Mitigating factors

145. *Compliance:* Internal compliance is an important proactive tool for preventing manipulative acts. The record here demonstrates that Hunter lacked a commitment to compliance. Hunter knew that Amaranth's compliance manual prohibited traders from "marking the close" in an effort "to protect or alter the value of an existing position."²⁶⁶

personally benefit Hunter, is relevant to the issues of deceptive conduct and manipulative intent. As set forth in the Revised Enforcement Policy Statement, these are relevant considerations in determining whether to assess a civil penalty.

²⁶² Initial Decision at P 80 (citing Ex. S-1 at 122-28, 147 (Kaminski)).

²⁶³ For instance, on February 24, 2006, Hunter wrote: "We have 4000 to sell MOC:" followed with "Shhh." See Ex. S-47 (instant message from Hunter to B. Glover).

²⁶⁴ Initial Decision at P 167.

²⁶⁵ Initial Decision at P 212 n.104.

²⁶⁶ Initial Decision at P 212.

And during the hearing, Hunter acknowledged that such conduct would be improper.²⁶⁷ Yet that is precisely what Hunter did during the at-issue settlement periods.

146. *Cooperation:* Exemplary cooperation, which is in good faith, consistent, and continuing, may serve as a mitigating factor.²⁶⁸ No credit will be given if a party does no more than the minimum, delays cooperation, impedes Commission activities, or consumes Commission resources unnecessarily.²⁶⁹ The parties dispute whether Hunter adequately cooperated in these proceedings. Hunter points to the fact that he travelled from Canada for four days of depositions and four days of hearing testimony. While the Commission does not dismiss the burden shouldered by Hunter, such conduct does not, in itself, constitute exemplary cooperation as contemplated by the Revised Enforcement Policy Statement. Deposition and hearing appearances are routine activities in legal proceedings. And any doubt about whether such conduct constitutes exemplary cooperation was resolved by the ALJ's findings that Hunter's testimony lacked candor and was not credible.²⁷⁰

147. *Self-Reporting:* Self-reporting of violations is an important consideration because companies are in the best position to detect and correct such violations. Neither Hunter nor Amaranth reported the violations. This factor, therefore, cannot serve to mitigate Hunter's violations.

(c) **Appropriate penalty**

148. Based on the foregoing factors and the entire record in this proceeding, the Commission believes that there is a significant need to deter the conduct at issue. Hunter's violations of the Anti-Manipulation Rule are serious, and he continues to be an active participant the natural gas markets.²⁷¹ Although it is within the Commission's statutory authority to impose a penalty that significantly exceeds \$30,000,000, in light of the thousands of NG Futures Contracts sold at Hunter's direction during the course of his manipulative scheme, the Commission concludes that a civil penalty of \$30,000,000 is appropriate and sufficient to discourage Hunter and others from engaging in market manipulation.

²⁶⁷ Tr. 450 (Hunter).

²⁶⁸ Revised Enforcement Policy Statement, 123 FERC ¶ 61,156 at P 66.

²⁶⁹ *Id.* P 68.

²⁷⁰ *See, e.g.*, Initial Decision at P 165, 167.

²⁷¹ At the time of the hearing, Hunter was working as a consultant for Peak Ridge Capital, advising the hedge fund regarding natural gas investments. Tr. 297 (Hunter).

149. In reaching this conclusion, the Commission considered the impact of such a penalty upon Hunter's continued financial viability. The evidence shows that Hunter had a substantial net worth at the time of the events at issue.²⁷² And while Hunter contends that Enforcement Litigation Staff failed to submit evidence of his current net worth, Hunter did not dispute the evidence of his net worth during the 2004-2005 timeframe. Nor did he proffer any evidence indicating that the \$30,000,000 penalty, which was initially proposed in the Order to Show Cause, would threaten his financial viability. In the absence of such evidence, the Commission concludes that a \$30,000,000 is appropriate.

E. Other Matters

150. On exceptions, Hunter reiterates his contention that (1) § 4A of the Natural Gas Act cannot be applied to natural persons, and (2) de novo review in federal district court is required before any civil penalty may be assessed for a violation of the Anti-Manipulation Rule.²⁷³ The Commission has addressed both of these issues extensively in prior orders.²⁷⁴ Hunter's Brief on Exceptions offers no reason to revisit those rulings.

151. Hunter also requests "review of the full Commission."²⁷⁵ The Commission specifically appointed the ALJ to hear the parties' evidence and resolve disputed issues of material fact. To that end, the ALJ conducted a three-week long hearing that produced a voluminous record. On the basis of that record, the ALJ produced a thorough and thoughtful Initial Decision which applied the facts established by the evidence to the legal framework developed by the Commission in prior orders. The full Commission has reviewed that Initial Decision, and the relevant supporting evidence, and affirms the ALJ's rulings as discussed above.

²⁷² The record reflects that Hunter earned nearly \$11 million in bonuses in 2004. His compensation package for 2005 consisted of \$2.175 million in base salary and bonuses, plus additional bonus amounts equal to 7 percent of his trading desk's net profits from January through May 2005, and 15 percent of such profits generated between June and December 2005. *See* Ex. S-1 at 122-28 (Kaminski). Amaranth had "stellar" returns in 2005, due in large part to Hunter's energy trading. *Id.* at 128.

²⁷³ Brief on Exceptions at 78.

²⁷⁴ *See, e.g.*, 2010 Rehearing Order at P 16, 27; Hearing Order at P 35-55, 77.

²⁷⁵ Brief on Exceptions at 9.

The Commission orders:

(A) The Commission affirms the Initial Decision as discussed above.

(B) No later than thirty days after the issuance date of this order, the Commission directs Hunter to pay to the United States Treasury by a wire transfer a sum of \$30,000,000 in civil penalties. If Hunter does not make this civil penalty payment within the stated time period, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 154.501(d) from the date that payment is late.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.