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On behalf of the
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**Testimony before the
Senate Energy and Natural Resources Committee
Subcommittee on Energy
United States Senate
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Honorable Chairwoman Cantwell, Ranking Member Risch and distinguished members of the committee, thank you for the invitation to testify before you today. I appreciate the opportunity to provide some insight on draft legislation entitled the “Energy Market Transparency Act of 2009.” I am also pleased to speak to the detrimental effects that inadequately regulated commodities markets and abusive trading practices have had on our nation’s independent fuel marketers and home heating fuel providers.

I thank the Chairwoman and the committee for your efforts to bring greater transparency and accountability to commodity markets. Without your dedication, this issue would never have gained the attention it deserved.

I serve as Vice Chairman of the Petroleum Marketers Association of America (PMAA). PMAA is a national federation of 47 state and several regional trade associations representing over 8,000 independent fuel marketers. These marketers account for approximately half of the gasoline and nearly all of the distillate fuel consumed by motor vehicles and home heating equipment in the United States.

Chairwoman, it was four years ago when PMAA members first sat in your office to discuss our concerns regarding price volatility and the correlations that we were seeing in the under-regulated energy commodity market, and we appreciate your strong commitment to resolving the issue.

Large-scale, institutional investors speculating in the energy markets are a driving force behind energy prices. The rise in crude oil prices, which reached \$150 a barrel for December delivery in July of last year, only to fall dramatically to as low as \$33 in December, was not completely a result of supply and demand fundamentals. But was unduly influenced by excessively-leveraged speculators, index investors and hedge funds.

Futures prices should operate on real data and not be driven by surges in buying. Last week futures prices on motor fuel went up 20 cents and rack prices also rose 20 cents. Did supply and demand change in Seattle, L.A., Houston, and New York? And that price increase happened when supplies are at an all time high.

According to hedge-fund manager Michael Masters, during the first six months of 2008, index speculators and hedge funds poured around \$55 billion into commodity indices which resulted in the buying of between 130 and 170 million barrels of West Texas Intermediate crude oil in the futures market; however, by late July and early August, index speculators began to pull money out of commodity indices. Approximately \$70 billion dollars were withdrawn from these commodity indices resulting in the selling of around 230 million barrels of crude oil by the end of the year.

According to a January 11, 2009 CBS News' *60 Minutes* investigation titled, "Did Speculation Fuel Oil Price Swings?," oil should not have skyrocketed to previously mentioned record levels last year, only to see prices dramatically collapse a few months later. The piece highlighted how investors were looking not to actually buy oil futures, but to make a fast buck in a "paper trade." This practice caused oil prices to rise faster and fall harder than could ever be explained by ordinary market forces alone. American consumers, small businesses and the broader economy were forced onto a roller coaster ride of greed and fear. However, the greatest victim of the 2008 energy crisis was consumer confidence in these markets' ability to determine a fair and predictable price for energy.

Commodity markets were not designed as an investment class – they were set up for physical hedgers to manage price risk by entering into a futures contract in order to lock in a price for future delivery. These index funds managers who believe commodities are an asset class, are really unwitting speculators. They are so large and lack fundamental commodity market knowledge, that they have dramatically distorted these markets we rely on. This abuse of this original intent must end now.

Oftentimes you hear the argument that for every buyer there is a seller to justify that there is a market for any price. Even though that is true, oftentimes the buyer and seller are both speculators who set the commodity price determined by the enthusiasm of the buyer compared with the enthusiasm of the seller. Unfortunately for consumers, they have to buy the commodity (gasoline, distillates) when the price has been ratcheted up by speculators. Thus, drivers, farmers, and all consumers have to buy the fuel at today's price that has been driven by speculators playing a futures game.

PMAA member companies rely on these markets to provide the consumer with a quality product at a price reflective of market fundamentals. Traditional speculators serve an important and healthy role by providing needed liquidity in the commodities market for this to be accomplished. However, investment and hedge funds have wreaked havoc on the price discovery mechanism that commodity futures markets provide to *bona-fide* physical hedgers.

Congress should act quickly to restore the transparency and oversight needed for secure and stable commodities markets and help restore the confidence in these markets that physical hedgers and consumer once had. If Congress does not act, and another excessively leveraged speculative bubble occurs again, how do you think it will affect the economy?

Therefore, PMAA urges Congress to expedite commodity markets reform legislation through the legislative process. Please do not allow the bill to be stalled by the financial services regulatory overhaul debate.

Specifically regarding the draft legislation, PMAA strongly supported language in the 2005 Energy Policy Act that required DOE to examine the amount of useable storage that is available in the U.S. We believe there has been a dramatic reduction in the amount of useable storage in the U.S., and that policy makers may not be aware of the extent of the reduction. Part of the reduction has been caused by overly aggressive under-ground storage tank requirements, specifically related to spill regulations that render much storage un-useable. Therefore, PMAA supports efforts to obtain data on storage availability.

Regarding *Section 3, Enhanced Information on Ownership of Critical Energy Supplies*, data collection would have to occur on a frequent basis and reporting requirements on the amount of commercially held oil should have a minimum threshold. We support the Committee's legislation. In addition, beyond the Committee's jurisdiction, in order to bring greater transparency to the energy commodities futures market, legislation must:

- Impose aggregate position limits at the control entity level on non-commercial traders, and across all trading environments, including over-the-counter markets that do not have physical connection to the underlying commodity;
- Distinguish between legitimate hedgers in the business of actually delivering the fuel to consumers, and those who are in the market for purely speculative purposes;
- Close the "London Loophole" by requiring foreign exchanges with energy contracts for delivery in the U.S. and/or that allow U.S. access to their platforms to be subject to comparable U.S. rules and regulations;
- Close the "Swaps Loophole" which allows so-called "index speculators" (who now amount to one-third of the market) an exemption on position limits which enable them to control unlimited amounts of energy commodities;
- Increase staff and other resources at the CFTC.

PMAA and our customers need our public officials to take a stand against abusive trading practices that artificially inflate energy prices and severely damage our economy. We strongly support the free exchange of commodity futures on open, well regulated and transparent exchanges that are subject to the rule of laws and accountability. Reliable futures markets are crucial to the entire petroleum industry and the American economy. Let's make sure that these markets are competitively driven by supply and demand and not purely the speculative whims and greed of Wall Street.

Thank you again for allowing me the opportunity to testify before you today.