BETTER MARKETS

– FACT SHEET –

Should Fraudsters Who Manipulate U.S. Commodity Markets Escape Liability Just Because They Run Their Schemes From Abroad?

Better Markets, AFREF Urge SCOTUS to Review Second Circuit's Flawed Decision on Market Manipulation

On April 17, 2020, Better Markets and the Americans for Financial Reform Education Fund ("AFREF") filed a joint amicus brief urging the Supreme Court to review a Second Circuit decision that tears a huge hole in the law aimed at holding market manipulators accountable. The case is *Atlantic Trading USA LLC v. BP P.L.C*, No. 19-1141.

We urged the Supreme Court to grant the petition for certiorari and review the Second Circuit's decision because, unless reversed, that decision will immunize manipulation of U.S. futures markets by those who operate from abroad. That in turn threatens to undermine the integrity of our markets, hurt the countless businesses that rely on them as hedging and price discovery tools, and ultimately burden millions of American consumers who will be unwittingly forced to pay more for the essential goods they need.

THE CASE. According to the plaintiffs (now Petitioners), the defendants manipulated the spot price of Brent crude oil by submitting false data on oil transactions to a price reporting service in London. That in turn distorted the price for Brent crude on U.S. futures markets—including the New York Mercantile Exchange—and the defendants profited on those U.S. futures trades. In fact, the ultimate goal of their scheme was to manipulate the U.S. futures prices and trade off those prices.

They succeeded, and a number of traders harmed by the scheme filed suit in the U.S. District Court for the Southern District of New York, which dismissed their claims. On appeal, the U.S. Court of Appeals for the Second Circuit affirmed, leaving those who suffered damages from the scheme without a remedy under the private right of action provisions of the Commodity Exchange Act ("CEA"). *Prime Int'l Trading Ltd. v. BP P.L.C.*, 937 F.3d 94 (2d Cir. 2019).

By misreading the CEA and the Supreme Court's precedent in *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), the Second Circuit essentially held that the relevant focus of the anti-manipulation provisions was not *transactions* on domestic futures exchanges but instead manipulative *conduct*, which in this case was largely overseas. The court went further and held that even if domestic transactions occur in the U.S. which are the focus of the statute, the overall conduct may still be "predominantly foreign," placing the fraud beyond the reach of U.S. law

OUR ARGUMENTS. In our brief, we recapped the reasons why the Court should grant cert.; explained the critically important role that our futures markets play in the U.S. and world economies; showed how manipulation impairs those markets; and highlighted the danger of the decision as an invitation to commit manipulation from abroad.

- The Second Circuit's decision creates a stark conflict with the Ninth Circuit, which is the leading basis for Supreme Court review. The court also strayed from Supreme Court precedent by attempting to graft a new test onto the decision in *Morrison*, which defines the international scope of U.S. law. And the court misread the CEA, which plainly *does* focus specifically on manipulation on designated contract markets in the U.S.

- Fair and transparent U.S. futures markets have long played an essential role in the U.S. and world economies, allowing farmers, manufacturers, and even financial managers to protect themselves from up and down swings in commodity prices. They also serve a critical price-discovery function, which countless businesses rely upon to make key decisions every day. The ultimate benefits for consumers are lower and more stable prices for virtually every product they use in daily life, from gasoline and groceries.
- When bad actors manipulate those markets to score illegal profits, as alleged in the *Atlantic Trading* case, everyone suffers—countless businesses and consumers, and even speculators who provide the liquidity necessary to keep those markets running smoothly.
- If left intact, the decision will amplify such misconduct, serving as a virtual invitation to commit manipulation on U.S. futures markets—provided such schemes are launched from abroad. The decision is especially harmful because it forecloses all of the mechanisms in the CEA designed to combat manipulation: CFTC enforcement actions, private lawsuits, and state enforcement actions. Over time, the cumulative harm will be prodigious, hurting countless businesses and consumers who depend on fair and transparent futures markets.

WHAT'S NEXT. If the Supreme Court agrees to hear the case, we'll plan to file an amicus brief on the merits, more thoroughly demonstrating the legal errors in the Second Circuit's decision and describing its harmful impact in greater detail.
