



**Mr. Sean Cota
President,
Cota & Cota, Inc.
Bellow Falls, Vermont
On behalf of the
Petroleum Marketers Association of America
and the New England Fuel Institute**

**Testimony before the
House Agriculture Committee
United States House of Representatives
Washington, DC**

February 3, 2009

Honorable Chairman Peterson, Ranking Member Lucas 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 "Derivatives Markets Transparency and Accountability Act." I am also pleased to speak to the affect that opaque, inadequately regulated commodities markets and abusive trading practices have had on our nation's independent fuel marketers and home heating fuel providers.

First, I would like to thank Chairman Peterson and the committee for their tireless 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 Treasurer on the Petroleum Marketers Association of America's (PMAA) Executive Committee. 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.

I am also here representing the New England Fuel Institute (NEFI), a 60-year-old trade association representing well over 1,000 heating fuel dealers and related service companies within the Northeastern United States.

In addition, I speak before you today as co-owner and President of Cota & Cota, Inc. of Bellows Falls, Vermont, a third generation family-owned and operated home heating fuel provider in southeastern Vermont and western New Hampshire. My business provides quality home heating fuel, including propane, heating oil and kerosene, to approximately 9,000 homes and businesses. I also market motor fuel, off-road diesel fuel, jet fuel and biofuels. Unlike larger energy companies, most retail fuel dealers are small, family-run businesses. Also unlike larger energy companies, we personally deliver product directly to the doorstep of American homes and businesses.

Before I begin, I would like to highlight the fact that PMAA and NEFI are hereby respectfully urging the committee to 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 any physical connection to the underlying commodity.

Our organizations have been voicing concern to Congress regarding the activities in “dark” commodity markets for more than three years now. It has become abundantly clear that large-scale, institutional investors speculating in the energy markets, were and continue to act as the driving force behind energy prices. The rise in crude oil prices, which reached \$147 in July of last year only to fall dramatically to as low as \$33 in December was not a result of supply and demand fundamentals – it was the direct result of excessively-leveraged speculators, index investors and hedge funds.

After three years of advocating for greater transparency and accountability in these markets, we have seen very little progress to this end. I would like to thank the members of this committee for passing the “Close the Enron Loophole Act” which was enacted as part of last year’s farm bill. It was an important first step. However, as addressed by this committee last year in H.R. 6604, this is a serious problem that needs a more aggressive legislative response, especially in light of the 2008 unprecedented run-up in commodity prices. The solution requires an unwavering commitment to vigorous oversight and enforcement by the new President and the Commodity Futures Trading Commission, which we believe to have been lacking in recent years.

According to a January 11, 2009 *60 Minutes* investigation titled, “Did Speculation Fuel Oil Price Swings?” several experts agreed that oil should not have skyrocketed to previously mentioned record levels last year, only to see prices dramatically collapse 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, fear and uncertainty. 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.

In 2007 and most of 2008, gasoline and heating oil retailers saw profit margins from fuel sales fall to their lowest point in decades as oil prices surged. The retail motor fuels industry is one of the most competitive industries in the marketplace, which is dominated by small, independent businesses. Retail station owners offer the lowest price for motor fuels to remain competitive, so that they generate enough customer traffic inside the store where station owners can make a modest profit by offering drink and snack items. As gas prices go up, the market becomes even more competitive and at times retailers are selling gas at a loss. In addition, because petroleum marketers and station owners must pay for the inventory they sell, their lines of credit were approaching their limit due to the high costs of gasoline, heating oil and diesel. This created a credit crisis with marketers' banks, which created liquidity problems and caused serious financial hardship for many petroleum marketers and station owners – some even were forced to close up shop.

In the summer of 2008, Goldman Sachs, a firm that trades in the crude oil market, predicted that crude oil would hit \$200 per barrel (translating to \$6 per gallon heating oil) by winter. Heating oil dealers, who typically purchase fuel in the summer months when seasonal product costs are typically at their lowest, were experiencing higher prices than ever before. Some customers, scared by statements made by Goldman Sachs and others, began demanding a fixed-price agreement with their dealer in an attempt to shelter their family budgets from higher prices.

Many dealers offered such contracts to meet this demand, driving many of them to purchase the fuel needed to supply these contracts up front during the summer months; for fear that prices would only head higher. When institutional investors exited the market in the fall, heating fuel dealers and their customers who had “locked in” to a price contract were put in a very bad spot, committed to fuel at a much higher cost than its current worth. Many of these consumers are elderly Americans and struggling families trying to make ends meet in a slumping economy riddled with high unemployment rates and evaporating savings and retirement accounts.

Ignoring or unaware of the potential consequences of their actions, investment-only speculators were concerned only about turning a profit. They were completely disconnected

from the commercial marketplace and the struggling consumers that fuel retailers like me serve personally every day. 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 “Investulators,” funds who believe commodities are an asset class, are really unwitting speculators, and are so large and lack any commodity market fundamental knowledge; they have dramatically distorted the markets we rely on. The abuse of this original intent must end now.

We 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, institutional investors have wreaked havoc on the price discovery mechanism that commodity futures markets provide to *bona-fide* physical hedgers, including heating fuel dealers. 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.

Therefore, PMAA and NEFI urge Congress to pass the “Derivatives Markets Transparency and Accountability Act” and enable the critical changes to the Commodity Exchange Act (CEA) needed for fully regulated futures markets. We further urge Congress to expedite commodity markets reform legislation through the legislative process and not allow the bill to be stalled by the financial services regulatory overhaul debate.

PMAA and NEFI strongly support most provisions in the “Derivatives Markets Transparency and Accountability Act,” including:

- Distinguishing between legitimate hedgers in the business of actually delivering the fuel to consumers, and those who are in the market for purely speculative purposes;
- Closing 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;

- Closing the “Swaps Loophole” which allows so-called “index speculators” (that now amount to one-third of the market) an exemption on position limits which enable them to control unlimited amounts of energy commodities;
- Increasing staff at the CFTC with an additional 200 employees and other resources.

While we applaud the committee for its diligent work on this legislation, we urge you to make the necessary adjustments to the “Derivatives Markets Transparency and Accountability Act of 2009” by **mandating aggregate speculative position limits on energy futures across all contract markets at the control or ownership level for contracts traded within the U.S. or by U.S. traders.** This important measure will help return the market to the physical market participants it was intended to serve. Aggregate position limits will also prevent a trader from going into one commodity exchange and trading the maximum amount of crude oil allowed and then going into another exchange to trade another large amount of futures positions, thereby circumventing anti-manipulation measures in order to take a massive and controlling position in one commodity. Additionally, PMAA and NEFI urge you to either strike Section 9 – Review of Over-the-Counter Markets, which requires the CFTC to study and report on the effects of potential position limits in OTC trading and aggregate limits across the OTC market, designated contract markets, and derivative transaction execution facilities. Or to include Section 9 but still mandate aggregate OTC position limits immediately before any study takes place.

We and our customers need our public officials in the new Congress, including those on this committee, in the new administration and the CFTC, to take a stand against excessive speculation and abusive trading practices that artificially inflate energy prices. 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 the speculative whims and greed of Wall Street.

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