

Litigation Law Alert: Department of Justice's New Oil and Gas Price Fraud Working Group Begins its Work

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On May 2, 2011, the Financial Fraud Enforcement Task Force's Oil and Gas Price Fraud Working Group (the "Working Group") began its work "monitor[ing] oil and gas markets for potential violations of criminal or civil laws to safeguard against unlawful consumer harm." The Working Group will focus on two primary tasks, according to Attorney General Eric Holder:

Exploring whether there is any evidence of manipulation of oil and gas prices, collusion, fraud, or misrepresentations at the retail or wholesale levels, and

Evaluating developments in commodities markets, including an examination of investor practices, supply and demand factors, and the role of speculators and index traders in oil futures markets.

The Working Group was formed on April 21, 2011, on the heels of rising gasoline prices in the U.S., and following President Obama's pledge to "root out" any fraud or market manipulation "to make sure that no one is taking advantage of the American people for their own short-term gain." Of particular note is the charge to examine investor practices and the role of speculators. According to some reports (here), the number of speculative bets in the oil and gas industry already exceeds the level of speculation that many economists believe led to the 2008 jump in oil and gas prices. Such speculation is not currently illegal, as the Commodity Futures Trading Commission has yet to finalize regulations designed to limit excessive speculation.

It is not unusual for administrations to open such inquiries, particularly following spikes in gasoline prices. (See here, for example, describing President Bush's 2006 inquiry following the rise in gasoline prices after Hurricanes Katrina and Rita in 2005.) Whether any prosecutions or civil actions will come from the Working Group's inquiry, however, remains to be seen—particularly as it relates to speculative trading. Neither the Attorney General nor the President cited any evidence of actual intentional manipulation of oil and gas prices, collusion, or fraud, and the Attorney General specifically acknowledged that "it is also clear that there are lawful reasons for increases in gas prices, given supply and demand." Past inquiries have led to limited recommendations to Congress, but have not resulted in any significant prosecutions for fraud, price fixing, price gouging, or other market manipulation.

Any company receiving any inquiry from the Working Group should contact counsel immediately. Stoel Rives LLP is ready to assist in responding to any Department of Justice inquiries with the advice and counsel of our experienced White Collar Criminal Law practitioners. (See here.)

We will continue to monitor events and provide updates as appropriate.

For additional information on this or any related topic, please contact:

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