

July 9, 2010

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REMIND YOUR SENATORS TO SUPPORT DERIVATIVES AND SWIPE FEE REFORMS!

The Senate is likely to vote as early as Tuesday evening on the "Restoring American Financial Stability Act of 2010" (H.R. 4173). Sixty votes will be required for passage – and the vote count is still too close for comfort. The House of Representatives approved H.R. 4173 before the July 4th recess by a vote of 237 - 192. To see how your lawmaker voted, please visit: <http://clerk.house.gov/evs/2010/roll413.xml>.

It is critical that you reach out to your Senators and urge them to vote in favor of H.R. 4173 by calling the Capitol Hill Switchboard at 202-224-3121 or by visiting PMAA's Legislative Action Center. If you haven't contacted your Senators, it is essential that you do so over the weekend. Urge your Senators to support H.R. 4173 which includes two of PMAA's top legislative issues: futures market and debit card interchange fee reforms.

This legislation contains every element of commodities trading reform sought by PMAA, NEFI, and their coalition allies over the past several years. Specifically, with respect to commodity derivatives, this legislation will:

- Fully close the "Enron Loophole" by empowering the Commodity Futures Trading Commission (CFTC) with authority over off-exchange (over-the-counter) derivatives markets, and requiring across-the-board transparency for all derivatives that must be either exchange-traded or cleared with real-time reporting.
- Provide a narrow exemption to clearing and capital requirements for legitimate end-users – meaning only for folks like petroleum marketers and heating oil dealers, who have a direct connection to commodities and not financial firms.
- Close the "Foreign Markets Loophole" by requiring that foreign boards of trade register with the CFTC if they plan on doing business in our markets.
- Provide the CFTC with additional authority to prosecute manipulation when it occurs.
- Require banks that want to engage in energy swaps to "spin-off" that part of their business into a separately capitalized entity that cannot access federally insured deposits. Other commodities except gold and silver, equities and risk credit default swaps are included as well. This is expected to dampen the willingness of Wall Street speculators to take excessively leveraged positions in commodities, including energy.
- Also (and perhaps most importantly) allow the CFTC to set limits on speculative positions in all markets, and requires them to set aggregate speculation limits across all markets.

Debit card interchange fees will finally be reined in with the passage of this important legislation. H.R. 4173 grants the Federal Reserve the authority to determine if the interchange rate is reasonable and proportional to the cost incurred by the issuer. The Federal Reserve may permit an adjustment to the interchange rate for issuers to recover fraud prevention costs if the issuer is in compliance with rules established by the Federal Reserve and can demonstrate that the incremental increase would go toward fraud prevention costs only. The language also permits retailers to offer a discount for cash, check or debit but not for using American Express or Discover over VISA or MasterCard. Retailers may also set purchase minimums as long as the minimum does not exceed ten dollars.

CBO: CLIMATE BILL HELPS DEFICIT BUT WILL RAISE ENERGY COSTS

The Congressional Budget Office estimated that the climate bill sponsored by Senators John Kerry (D-MA) and Joe Lieberman (I-CT) would raise energy costs \$751 billion dollars from 2011 to 2020. In that same time period, \$19 billion would go toward deficit reduction and the remaining \$732 billion would be targeted to help some consumers pay for the increase in energy costs.

The Kerry-Lieberman bill is similar to the Waxman-Markey bill in its aim to cut carbon emissions across the economy 17 percent over 2005 levels by 2020. However, under the Kerry-Lieberman bill sectors of the economy are treated differently. Carbon curbs are first placed on the utility sector followed by the heavy manufacturing sector and then the transportation sector, which is treated completely differently than the other sectors.

Even though the House approved the Waxman-Markey bill last year, the future of a climate bill in the Senate remains in doubt. There is some support for legislation introduced by Senator Bingaman that would require utilities to get their energy from renewable sources, though it is uncertain if the Senate can muster the 60 votes necessary for passage.

FATE OF SPCC DEADLINE EXTENSION RULE CAUGHT UP IN GULF OIL SPILL BACKLASH

The long anticipated EPA rulemaking to extend the deadline for SPCC plan revision compliance may be in jeopardy. The rule is important to petroleum marketers who are still in the process of upgrading SPCC plans for their bulk plant operations. The rulemaking was sent for final approval to the White House Office of Management and Budget (OMB) in March and a final rule extending the November 10, 2010 compliance deadline was due out in August. The EPA proposed the extension after publishing amendments in December 2008 to the original 2003 SPCC regulations that require existing SPCC plans to be revised. The EPA justified the extension in order to allow regulated parties more time to comply in light of the amended requirements.

Unfortunately, the fate of the rule is now caught up in the federal government reaction to the oil spill in the Gulf of Mexico. The EPA pulled the rule back from the OMB approval process for further agency reconsideration shortly after the spill began in April. Reports are that the EPA pulled the rule after receiving pressure from the White House that it was not the best time to be finalizing a rule extending the deadline for more stringent oil spill response regulations given what was happening in the Gulf. It is not clear what, if anything, the EPA changed in the deadline extension rule during the period of reconsideration. However, it is notable that the agency didn't simply scrap the rule altogether but instead resubmitted it for OMB approval last week after a period of review and possible change.

The SPCC rule also covers offshore drilling and production facilities so it is possible the reconsideration focused only on the deadline as it applies to these facilities without affecting the deadline extension for bulk plants operated by petroleum marketers. It is also possible that a shorter extension period across the board for all facilities may result.

The final rulemaking on the extension is now expected to occur in September.

NFPA AMENDMENT TO PAVE THE WAY FOR USE OF E15 IN LEGACY EQUIPMENT FAILS

The National Fire Protection Association recently defeated an amendment to the fire code that would have made it easier for petroleum marketers to use E15 gasoline in existing tanks and dispensers. The proposed amendment to NFPA 30A Code for Motor Fuel Dispensing Facilities and Repair Garages was important because it was meant to address the significant infrastructure problems associated with the expected EPA decision to allow the use of an E15 gasoline blend. Currently, Underwriters Laboratory (UL) only certifies existing UST equipment and dispensers for ethanol blends up to E10, a standard adopted under NFPA 30A. This limitation in the fire code, which is adopted by state and local fire marshals nationwide, is seen as a key impediment to the successful introduction of E15 in the retail marketplace and the reduction of risk of liability for petroleum marketers in the event of a leak.

The amendment failed to meet the necessary 75 percent majority approval by just two votes. Fire officials who commented on the amendment thought that the proposed language was ambiguous and not detailed enough to allow authorities having jurisdiction to make informed decisions when reviewing existing dispensing devices for E15 blends. The defeat of the amendment is mitigated somewhat since UL recently certified new equipment for concentrations of ethanol blends up to E85. In addition, petroleum marketers still have the option to use the equivalency section of the fire code to get non-certified and listed equipment approved for blends over E10.

2011 WESTERN PETROLEUM MARKETERS CONVENTION & CONVENIENCE STORE EXPO LAS VEGAS, NEVADA

Start planning now to attend the 2011 WPMA Convention and Convenience Store Expo. It will be held at the Mirage in Las Vegas, Nevada. Mark your calendars for February 22-24, 2011.

MARK YOUR CALENDARS FOR UPCOMING EVENTS IN 2010

August 1-3, 2010 – IPM&CSA Convention – Coeur d'Alene Resort – Coeur d'Alene, Idaho

August 31-September 1, 2010 – NMPMA Convention – Embassy Suites, Albuquerque, New Mexico

September 8-10, 2010 – UPMRA Convention – Park City Marriott – Park City, Utah

Petro Pete: “A diplomat is someone who can tell you to go to hell in such a way that you will look forward to the trip.”

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- 3 axle trailer with lift able rear axle
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- Trailer Available July 2010
- Pictures Available upon request

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- Pictures available upon request

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Ryan Murdock
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