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CFTC and EPA sign Memorandum of Understanding on Renewable Fuel Markets

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A slowly developing renewable fuels market, several well-publicized fraud cases, and ***EPA's*** delayed volumetric designations that frustrated industry participants have led EPA and the CFTC to a new era of cooperation. On March 17, 2016, the ***Commodity Futures Trading Commission (CFTC)*** and the ***Environmental Protection Agency (EPA)*** announced that they would share Renewable Fuel Standard data and analysis pursuant to a Memorandum of Understanding (MOU). Under the MOU, the CFTC and EPA can share information and conduct joint or separate investigations into potential fraud, market abuse, deceptive practices, commodity market manipulation, or other violations relating to the generation of, and trading in, Renewable Identification Numbers (RINs).

EPA is responsible for the Renewable Fuels program, under which petroleum marketers must sell a specified volume of renewable fuels each year. The RIN is the currency used to demonstrate compliance. RINs are self-generated as the renewable fuel is produced and sold into the market. The RIN can be "separated" from the fuel and bought and sold on what is now a robust RIN market in the EPA Moderated Transaction System (EMTS).

In recent cases, fake RINs have been created and traded. For example, on March 7, 2016, the owner of a biodiesel company in Texas, Philip Joseph Rivkin, was sentenced to 10 years in prison and ordered to pay $138 million in restitution and forfeiture for faking the production of millions of gallons of biodiesel at his Green Diesel LLC's Houston facility and selling over 60 million bogus RINs. In 2012, the owner of Clean Green Fuel, LLC, was found guilty of wire fraud, money laundering, and Clean Air Act violations for similar fake RIN transactions.

The worst consequence of these fraud convictions, though, was on the buyer of the fraudulent RINs. The RFS is a "buyer beware" program, and fraudulent RINs must be replaced, at great cost, by the obligated parties. The "Q-RIN," introduced by EPA in 2014, helps to defeat some fraud potential but not all fuel goes through the "qualification" process.

EPA's delayed volumetric designations for 2014, 2015, and 2016, not announced until November 30, 2015, caused noticeable changes in the futures markets. In December 2015, Reuters reported that U.S. gasoline futures prices on the New York Mercantile Exchange rose due to the EPA's increase in requirements for refiners to meet renewable fuel requirements, boosting RINs and making it more costly to blend gasoline.

CFTC and EPA each have a need and interest in the information being shared. The EPA will benefit from CFTC advice on techniques that could be employed to minimize fraud and market abuses as well as conduct appropriate oversight in RIN and renewable fuel markets to fulfill the EPA's functions. Additionally, the information would increase the CFTC's understanding of the operation of and participants in the RIN and renewable fuel markets. As any potential fraud or market abuse related to RINs could have an impact on futures prices under the CFTC's jurisdiction, the CFTC could also be interested in investigating activities in the RIN and renewable fuel markets.

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