

CLIENT ALERT

# The CFTC and FERC Increase the Maximum Limits for Civil Monetary Penalties

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## AUTHORS

**Paul J. Pantano, Jr.** | **Norman C. Bay** | **Neal E. Kumar** | **Rita M. Molesworth**  
**Margo A. Bailey**

The Commodity Futures Trading Commission (the “CFTC”) and the Federal Energy Regulatory Commission (“FERC”) have announced required annual adjustments to their existing rules governing the maximum amount of civil monetary penalties (“CMPs”) that they may assess against market participants in 2023 for violations of the Commodity Exchange Act (the “CEA”), the Federal Power Act, the Natural Gas Act, the Natural Gas Policy Act of 1978, the Interstate Commerce Act, and regulations that they administer.<sup>1</sup> These increased amounts, together with the expansive approach regulators take to counting the number of violations (*e.g.*, daily, per transaction, number of parties, market harm, *etc.*), continue the substantial escalation in civil penalties for regulatory violations in the commodity and derivatives markets.

### **CFTC Adjusted CMPs**

On January 11, 2023, the CFTC amended its existing rule governing the maximum CMP amounts that may be imposed under the CEA to adjust for inflation. The amended rule establishes increased maximum, inflation-adjusted CMP amounts that the CFTC may assess for violations of Sections 6(b) and 6(c) of the CEA and any relevant CFTC rules, regulations, and orders promulgated pursuant to the CEA. The amended rule and increased CMPs took effect on January 11, 2023, and are applicable to penalties assessed after January 15, 2023. The new adjusted maximum penalty amounts are set forth in the table below.

<sup>1</sup> The Federal Civil Penalties Inflation Adjustment Act of 1990 and a 2015 amendment to the Act require federal agencies annually to adjust CMP amounts by January 15<sup>th</sup> of each year to account for inflation.

## THE CFTC AND FERC INCREASE THE MAXIMUM LIMITS FOR CIVIL MONETARY PENALTIES

Civil Monetary Penalty Description		Penalty Amount Prior to January 11, 2023 <sup>2</sup>	New Adjusted Maximum Penalty Amount <sup>3</sup>
<b>Civil Monetary Penalty Imposed by the Commission in an Administrative Action</b>			
Any person other than a registered entity	Non-manipulation or attempted manipulation	\$180,714	\$194,710
Any person other than a registered entity	Manipulation or attempted manipulation	\$1,303,559	\$1,404,520
A registered entity or any of its directors, officers, or employees	Non-manipulation or attempted manipulation	\$995,471	\$1,072,570
A registered entity or any of its directors, officers, or employees	Manipulation or attempted manipulation	\$1,303,559	\$1,404,520
<b>Civil Monetary Penalty Imposed by a Federal District Court in a Civil Injunctive Action</b>			
Any person	Non-manipulation or attempted manipulation	\$199,094	\$214,514
Any person	Manipulation or attempted manipulation	\$1,303,559	\$1,404,520

### **FERC Adjusted CMPs**

On January 12, 2023, FERC amended its existing rule governing the maximum CMP amounts that may be imposed under the Federal Power Act, the Natural Gas Act, the Natural Gas Policy Act of 1978, and the Interstate Commerce Act to adjust for inflation. The amended rule increases the maximum, inflation-adjusted CMP amounts that FERC may assess for violations of these statutes and any relevant FERC rules, regulations, and orders promulgated thereunder. The

<sup>2</sup> Annual Adjustment of Civil Monetary Penalties To Reflect Inflation—2023, 88 Fed. Reg. 1501, 1502 (Jan. 11, 2023) (amending 17 C.F.R. Part 143).

<sup>3</sup> *Id.*

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amended rule and increased CMPs are effective as of January 12, 2023, and the new adjusted maximum penalty amounts are set forth in the table below.

<b>Statutory Provision Pursuant to which CMP is Imposed</b>	<b>Penalty Amount Prior to January 11, 2023<sup>4</sup></b>	<b>New Adjusted Maximum Penalty Amount<sup>5</sup></b>
16 U.S.C. 825o-1(b), Sec. 316A of the Federal Power Act	\$1,388,496 per violation, per day	\$1,496,035 per violation, per day
16 U.S.C. 823b(c), Sec. 31(c) of the Federal Power Act	\$25,075 per violation, per day	\$27,017 per violation, per day
16 U.S.C. 825n(a), Sec. 315(a) of the Federal Power Act	\$1,388,496 per violation, per day	\$1,496,035 per violation, per day
15 U.S.C. 717t-1, Sec. 22 of the Natural Gas Act	\$1,388,496 per violation, per day	\$1,496,035 per violation, per day
15 U.S.C. 3414(b)(6)(A)(i), Sec. 504(b)(6)(A)(i) of the Natural Gas Policy Act of 1978	\$1,388,496 per violation, per day	\$1,496,035 per violation, per day
49 App. U.S.C. 6(10) (1988), Sec. 6(10) of the Interstate Commerce Act	\$1,453 per offense and \$73 per day after the first day	\$1,566 per offense and \$78 per day after the first day
49 App. U.S.C. 16(8) (1988), Sec. 16(8) of the Interstate Commerce Act	\$14,536 per violation, per day	\$15,662 per violation, per day
49 App. U.S.C. 19a(k) (1988), Sec. 19a(k) of the Interstate Commerce Act	\$1,453 per offense, per day	\$1,566 per offense, per day
49 App. U.S.C. 20(7)(a) (1988), Sec. 20(7)(a) of the Interstate Commerce Act	\$1,453 per offense, per day	\$1,566 per offense, per day

<sup>4</sup> 182 FERC ¶ 61,002 (2023) at 4.

<sup>5</sup> *Id.*

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## THE CFTC AND FERC INCREASE THE MAXIMUM LIMITS FOR CIVIL MONETARY PENALTIES

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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**Paul J. Pantano, Jr.**

202 303 1211

ppantano@willkie.com

**Norman C. Bay**

202 303 1155

nbay@willkie.com

**Neal E. Kumar**

202 303 1143

nkumar@willkie.com

**Rita M. Molesworth**

212 728 8727

rmolesworth@willkie.com

**Margo C. Bailey**

202 303 1178

mbailey@willkie.com

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