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Contact: Madeline Tucker, Press Secretary, at 202-618-6433 or mtucker@bettermarkets.org.

Supreme Court Can Close Huge Loophole that Exposes Businesses and Consumers to Commodity Market Manipulation

WASHINGTON, D.C.— Yesterday, Better Markets, the Consumer Federation of America (CFA), and the Institute for Agriculture and Trade Policy (IATP) filed an *amicus curiae* brief urging the Supreme Court to review and reverse a lower court decision that dramatically limited protections against manipulation in the commodity markets, in the case of *Laydon v. Cooperatieve Rabobank U.A.*, No. 23-80. Supreme Court review is vital to correct a lower court decision that immunizes unquestionably illegal manipulation in the U.S. futures markets simply because it was carried out from overseas locations.

"By holding that manipulation of U.S. markets by foreign actors lies beyond the reach of the Commodity Exchange Act, what the lower court has said to the world's fraudsters and manipulators is that you may manipulate our futures markets and victimize our businesses, consumers, and traders provided you do so remotely," explained Stephen Hall, Legal Director and Securities Specialist for Better Markets. "That's why we have joined with two prominent organizations committed to consumer protection and fair derivatives markets to urge the Supreme Court to grant the petition for review and make clear to market manipulators that they cannot contaminate U.S. markets with impunity simply by operating overseas."

"Market manipulation of contracts on U.S. exchanges is a clear violation of the Commodity Exchange Act whether the offender is a U.S. person or a foreign person," said Steve Suppan of the Institute for Agriculture and Trade Policy. "The Petitioners have given the Supreme Court ample grounds to take up this case and rule that foreign persons manipulating contracts on U.S. exchanges are subject to the anti-manipulation provisions in the law, which allow both private actions and government enforcement." As Micah Hauptman, Director of Investor Protection for CFA observed, "if the Second Circuit decision stands, bad actors will be given a roadmap of how to commit market manipulation without facing any consequences for the harm they cause."

The case has real-life implications for all Americans. The U.S. commodity markets play a vital but largely under-appreciated role in stabilizing prices for virtually all of the products that American consumers depend on in their daily lives, from gasoline to groceries and even financial instruments keyed to interest rates and foreign currencies. Market manipulators distort those prices, inflicting enormous collective harm on U.S. businesses and consumers. Beyond that, noted Hauptman, "ordinary Americans are now directly exposed to futures market manipulation in a way and to a degree that was not true just a decade ago, given the proliferation of investment products. Now more than ever, it's critical that American consumers receive strong protections against market manipulation to safeguard their financial interests as they grapple with the costs for everyday goods and manage their investments."

The lower court's decision conflicts with the Supreme Court's own precedents as well as those from other federal circuit courts, making it an appropriate case for the High Court's review. In addition to supporting the petitioners' arguments on the merits, the amicus brief highlights the exceptional importance of the case. It explains the vital role of the U.S. commodity markets in establishing a reliable mechanism for price discovery and hedging. The reality is that not only farmers but all types of manufacturing enterprises use those markets every day to protect against price increases in the raw materials they need or price declines in the finished goods they produce. The brief also explains the prodigious harm inflicted by market manipulation, explaining why eradicating this form of abuse has been a consistent and increasingly urgent Congressional concern for over 100 years.

Finally, the brief drives home the point that the commodity markets have long been international in scope, without meaningful geographical boundaries. "A market manipulator's preferred choice for their base of operations must not—and in fact does not, under a correct reading of the law—immunize them for the harms they inflict on U.S. markets, businesses, and consumers," Hall said.

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