

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

<p>In the Matter of:</p> <p>MARATHON PETROLEUM COMPANY LLC</p> <p style="text-align: right;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CFTC Docket No. <u>07-09</u></p> <p>ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c), 6(d), AND 9(a)(2) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS</p>
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I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Marathon Petroleum Company LLC ("MPC" or "Respondent"), an indirect wholly-owned subsidiary of Marathon Oil Corporation, has violated Sections 6(c), 6(d), and 9(a)(2) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2002). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether MPC engaged in the violation set forth herein, and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Without admitting or denying the findings of fact herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c), 6(d) and 9(a)(2) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions ("Order"), and acknowledges service of this Order. Respondent consents to the use by the Commission of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Respondent does not consent to the use of the Offer or the findings in this Order as the sole basis for any other proceeding brought by the Commission, except that Respondent does consent to the use by the Commission of the Offer or the findings in this Order in any proceeding under Title 11 of the United States Code in which Respondent is a debtor or to enforce the terms of this Order. Respondent does not consent to the use of the Offer or the findings in this Order by any other person or entity in this or any other proceeding. The findings made in this Order are not binding on any other person or entity, including, but not limited to, any person or entity named as a defendant or respondent in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

On November 26, 2003, MPC, through an employee trading crude oil, attempted to manipulate a price of spot cash West Texas Intermediate crude oil delivered at Cushing, Oklahoma ("WTI"), a commodity in interstate commerce, by attempting to influence downward the Platts market assessment for spot cash WTI for that day.

The Platts market assessment for WTI is derived from trading activity during a particular 30-minute period of the physical trading day. The Platts market assessment for WTI is used as the price of crude oil in certain domestic and foreign transactions. MPC, which owns approximately 6% of the total crude oil refining capacity in the United States, at the time in question priced approximately 7.3 million barrels of physical crude oil per month (or approximately 14% of the physical crude oil it purchased each month) off the Platts market assessment for WTI.

B. RESPONDENT

Marathon Petroleum Company LLC, a refining, marketing and transportation company, is a subsidiary of Marathon Oil Corporation. Based in Findlay, Ohio, MPC is the nation's fifth largest petroleum refiner, and its 974,000 barrels per day of crude oil refining capacity represent approximately 6% of the total U.S. capacity. Prior to September 1, 2005, MPC was known as Marathon Ashland Petroleum LLC, of which Ashland, Inc. owned a 38% interest prior to June 30, 2005.

C. FACTS

1. The Platts Crude Oil Assessments and the Global Use of those Assessments

Platts, a division of the McGraw Hill Companies, Inc., establishes crude oil assessments for various markets throughout the United States and internationally, including WTI. WTI is the U.S. benchmark grade crude oil, and is the primary deliverable grade under the NYMEX light, sweet crude oil futures contract. WTI prices, therefore, closely track the NYMEX light, sweet crude oil futures contract.

In contrast to a price index, which reflects a weighted average of the prices at which transactions were executed, the Platts assessment represents Platts' determination of the price at which a deal did take place, or could have taken place, in a given market. Platts derives its assessments based on physical, fixed-price trading that occurs during a thirty minute trading

“window,”² a system commonly known as Market on Close. During the window, hereinafter referred to as the “Platts window,” Platts representatives remain in constant contact with participants in the window, including traders and brokers, either by phone or instant message. Platts solicits from participants information, including the bids and offers at which they are prepared to enter into transactions, as well as transactions executed during the window. Prices in the Platts window are quoted at a differential to the daily settlement price posted by the NYMEX. At all times relevant herein, following the conclusion of the window, Platts determined a price that was intended to represent the value at which a deal could or did take place at the close of the Platts window.

According to Platts, its crude oil assessments, including those for WTI, are used as a price discovery tool: buyers and sellers of physical barrels of crude oil price their domestic and international transactions off of the various price assessments compiled by Platts. Platts stated that its daily spot oil assessments are used in a variety of ways: (1) for the settlement of floating price deals; (2) under long-term contracts; (3) on a spot basis; (4) for the settlement of derivatives contracts such as swaps; and (5) by futures exchanges. Platts indicates that its assessments are also used to monitor trader performance, to quantify financially the value of oil transferred from the upstream production departments to the refinery side of the business and then for the transfer to the traders supplying the marketplace. As stated by Platts: “The extent of the usage of Platts prices in spot and term deals, and in derivatives settlements is very large and a multiple of the world’s daily crude oil and refined product output.”

2. MPC Attempted to Manipulate the Platts Assessment for Spot WTI

During the November 26, 2003 Platts window, MPC, through an employee trading crude oil, attempted to manipulate a price of WTI by attempting to influence downward the Platts market assessment for spot cash WTI. As a net purchaser of foreign crude oil priced off the Platts spot cash WTI assessment, if its conduct was successful, MPC would have benefited from a lower Platts spot cash WTI assessment. On November 26, 2003, MPC purchased NYMEX WTI contracts with the intention of selling physical WTI during the Platts window at prices intended to influence the Platts WTI spot cash assessment downward. During the November 26, 2003 Platts window, MPC knowingly offered to sell spot cash WTI through the prevailing bid at a price level calculated to influence downward the Platts WTI assessment.

D. LEGAL DISCUSSION

By Attempting to Manipulate WTI, MPC Violated the Act

Section 9(a)(2) of the Act makes it unlawful for “[a]ny person to manipulate or attempt to manipulate the price of any commodity in interstate commerce. . . .” 7 U.S.C. § 13(a)(2) (2002). Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9 and 13b (2002), together authorize the Commission

² The “window” simply refers to a segment of the trading day when Platts tracks the evolution of fixed price trading (at a differential to the NYMEX daily futures settlement) for physical barrels of crude oil for delivery at specific locations (e.g., WTI). At all times relevant herein, the window for WTI crude oil opened at 2:45 p.m. (after the 2:30 p.m. EST close of open outcry trading in the light, sweet crude oil futures contract on the NYMEX), and lasted until after-hours futures trading began at 3:15 p.m. EST on the NYMEX ACCESS internet-based trading platform.

to serve a complaint and provide for the imposition of, among other things, fines and penalties if the Commission “has reason to believe that any person . . . has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any contract market . . . or otherwise is violating or has violated any of the provisions of [the] Act.”

The following elements are required to prove an attempted manipulation: (1) an intent to affect the market price, and (2) some overt act in furtherance of that intent. See *In re Hohenberg Bros. Co.*, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,271 at 21,477 (CFTC Feb. 18, 1977); *CFTC v. Enron Corp.*, 2004 WL 594752, *7 (S.D. Tex. 2004); *CFTC v. Bradley*, 408 F.Supp. 2d 1214, 1220 (N.D. Okla. 2005). For example, in *Hohenberg Bros.*, the Commission stated that in order to find the respondents liable for attempting to manipulate the price of cotton futures downward, it must appear from the record, or be inferable from the totality of the circumstances, that “respondents intended their actions to have a depressant effect on the market and that they took some action in furtherance of that manipulative intent.” *Hohenberg Bros.*, ¶ 20,271 at 21,478. The Commission also stated that “a dominant or controlling position in the market is not a requisite element to either manipulation or attempted manipulation and is not essential to altering successfully the forces of supply and demand.” *Id.*

To prove the intent element of an attempted manipulation, it must be shown that a MPC employee “acted (or failed to act) with the purpose or conscious object of causing or effecting a price or price trend in the market that did not reflect the legitimate forces of supply and demand.” *In re Indiana Farm Bureau Cooperative Association*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,796 at 27,283 (CFTC Dec. 17, 1982); see also *In re Henner*, 30 A.D. 1151, 1181 (1971) (finding that it is not necessary to determine a respondent’s precise motive; if a respondent intentionally traded in a manner to distort price, that is manipulation).²

To prove the “overt act” element of the offense, it must be shown that a MPC employee performed an act in furtherance of the specific intent to affect the market price. See *CFTC v. Atha*, 420 F.Supp. 2d 1373, 1381 (N.D. Ga. 2006).

Whenever a buyer in a market intentionally pays more than he has to for the purpose of causing the quoted price to be higher than it would otherwise have been, or conversely, a seller intentionally sells cheaper than necessary for the purpose of causing the quoted price to be less than it would otherwise have been, the resultant price is an artificial price not determined by the free forces of supply and demand in that market. See *Henner*, 30 A.D. at 1198, 1234-1235; Cf. *In re Howard Randolph et al.*, 21 A.D. 219 (1962); *In re Zenith-Godley Co.*, 6 A.D. 900 (1947).

³In assessing whether a defendant possessed the requisite intent in a manipulation or attempted manipulation case, the Commission has declared that it is not necessary to prove that a defendant:

knew to any degree of certainty that his actions would create an artificial price. It is enough to present evidence from which it may reasonably be inferred that the accused “consciously desire[d] that result, whatever the likelihood for that result happening from his conduct.”

Indiana Farm Bureau, ¶ 21,796 at 27,283 (quoting *United States v. U.S. Gypsum Co.*, 438 U.S. 422 at 445 (1978)).

On November 26, 2003, a MPC employee specifically intended to manipulate a price of WTI, and knowingly and purposefully traded through the prevailing market price in an attempt to influence downward the Platts WTI assessment price to benefit MPC's foreign crude oil purchases priced off of the assessment. The purchase of NYMEX WTI contracts with the intention of selling physical WTI during the Platts window at prices intended to influence the Platts spot cash WTI assessment downward constitutes an overt act in furtherance of the attempted manipulation. Further, MPC knowingly offered through a prevailing bid, *i.e.* it offered to and did sell WTI cheaper than necessary, also an overt act of such attempt. Accordingly, the MPC employee's conduct constituted an attempted manipulation of a price of WTI as set forth in Sections 6(c), 6(d) and 9(a)(2) of the Act, which, if successful, would have affected WTI prices in interstate commerce. MPC is liable for its employee's conduct pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002).

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that on November 26, 2003, MPC violated the attempted manipulation prohibitions of Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2002).

V.

OFFER OF SETTLEMENT

Respondent has submitted an Offer in which it, without admitting or denying the findings herein: acknowledges receipt and service of the Order; admits jurisdiction of the Commission with respect to the matters set forth in the Order and for any action or proceeding brought or authorized by the Commission based upon violations of or for enforcement of the Order; waives service and filing of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any and all objections to the staff's participation in the Commission's consideration of the Offer, any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, and all claims that it may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000) and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2007), relating to, or arising from, this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; stipulates that the record basis on which this Order is entered consists solely of the Order to which Respondent has consented, including the findings in this Order; and consents to the Commission's issuance of this Order. Pursuant to the Offer, Respondent agrees to entry of the Order that: makes findings, including findings that Respondent violated Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2002); orders Respondent to cease and desist from violating the provisions of the Act that it has been found to have violated; orders Respondent to pay a civil monetary penalty of One Million Dollars (\$1,000,000); and orders

Respondent to comply with the conditions and undertakings as set forth in this Order. Upon consideration, the Commission has determined to accept the Offer.

VI.

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent shall cease and desist from violating Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2002);
2. Respondent shall pay a civil monetary penalty of One Million Dollars (\$1,000,000) within ten (10) days of the date of the entry of this Order. Respondent shall pay this civil monetary penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission, and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
Attn: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-6569

If payment by electronic transfer is chosen, Respondent shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the penalty with a cover letter that identifies the Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to:

Office of Cooperative Enforcement
Division of Enforcement, 7th Floor
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

AND

Gregory G. Mocek
Director of Enforcement
Division of Enforcement, 7th Floor
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

3. Respondent shall comply with the following conditions and undertakings as specified:

(a) Future Cooperation with the Government

The Commission recognizes the cooperation of Respondent during the investigation of this matter by the Commission's Division of Enforcement ("Division"). Respondent shall continue to cooperate fully and expeditiously with the Commission, including the Division, and all other federal government agencies (hereafter, collectively referred to as, the "Government") in this proceeding, and in any investigation, civil litigation, or administrative matter related to the subject matter of this proceeding or any current or future Government investigation related thereto. Respondent agrees to cooperate fully and expeditiously with the Government's ongoing efforts to discover documents and information related to trading in the Platts window and other conduct influencing and/or affecting the Platts market assessment for WTI. As part of such cooperation, Respondent agrees to comply fully, promptly, and truthfully with any inquiries or requests for information relating to trading in the Platts window for spot cash WTI including, but not limited to, inquiries or requests:

- (i) for authentication of documents;
- (ii) for any documents within Respondent's possession, custody, or actual or constructive control, including, inspection and copying of documents (other than documents protected by the work product doctrine or attorney-client privilege);
- (iii) to use its best efforts to produce any current (as of the time of the request) officer, director, or employee, of Respondent, regardless of the employee's location and at such location that minimizes the Government's travel expenditures, to provide assistance at any Government trial, proceeding, or Government investigation related to the subject matter of this proceeding, including, but not limited to, requests for testimony, depositions, and/or

interviews, and to encourage them to testify completely and truthfully in any such Government proceeding, trial, or investigation; and

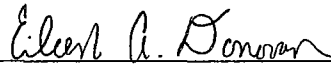
- (iv) for assistance in locating and contacting any prior (as of the time of the request) officer, director, or employee of Respondent.

Respondent also agrees that it will not undertake any act that is intended to limit its ability to cooperate fully with the Government. Respondent designates Kenneth M. Rosenzweig of the Katten Muchin Rosenman LLP law firm to receive all requests for information pursuant to this undertaking. Should Respondent seek to change the designated person to receive such requests, notice shall be given to the Division of such intention fourteen (14) days before it occurs. Any person designated to receive such requests shall be located in the United States.

(b) Public Statements

By neither admitting nor denying the findings, Respondent agrees that neither it nor any of Respondent's agents or employees under its authority and control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order or creating, or tending to create, the impression that the Order is without factual or legal basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take factual or legal positions in other proceedings to which the Commission is not a party. Respondent will undertake all steps necessary to assure that all of its agents and employees under its authority and control understand and comply with this agreement.

By the Commission.



Eileen A. Donovan
Acting Secretary of the Commission
Commodity Futures Trading Commission

Dated: August 1, 2007