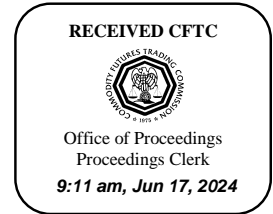


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



In the Matter of:

Trafigura Trading LLC,
Respondent

CFTC Docket No. 24-08

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Trafigura Trading LLC (“Trafigura” or “Respondent”) has, during the periods specified below (“Relevant Periods”), violated Sections 6(c)(1) and 23(h)–(j) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 9(1) and 26(h)–(j), and Regulations 165.19 and 180.1(a)(1) and (3), 17 C.F.R. §§ 165.19 and 180.1(a)(1), (3) (2023), of the Commission Regulations (“Regulations”). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. Summary

Trafigura is a related company of Trafigura PTE, Ltd. (“PTE”), an energy, metals, and minerals commodity trading firm registered in Singapore with its principal place of business in Singapore. The Trafigura group of companies has significant physical and derivative oil trading operations around the world, including large trading operations in Houston, Texas, operated by Trafigura. At various points during the Relevant Period, Trafigura engaged in the following activities in violation of the Act and Regulations:

Misappropriation of Material Nonpublic Information. From 2014 through April 2019, Trafigura obtained material nonpublic information from an employee of a Mexican trading entity (“MTE”), which information Trafigura knew or was reckless in not knowing had been transmitted in breach of the MTE employee’s duties to the MTE. Certain Trafigura traders traded while in knowing possession of this information.

Manipulative Conduct. In February 2017, Trafigura engaged in conduct during the Platts window which was at a minimum reckless as to the impact on the U.S. Gulf Coast high-sulfur fuel oil price assessment published by S&P Global Platts (“Platts”), a price-reporting agency, which benefitted Trafigura’s futures and swaps positions that settled by reference to that assessment, including derivatives traded on United States registered entities such as the New York Mercantile Exchange (“NYMEX”) and ICE Futures U.S. Inc.

Contracts that Impeded Voluntary Communications with the Commission. Between July 31, 2017 and 2020, Trafigura required its employees to sign employment agreements, and requested that former employees sign separation agreements, with broad non-disclosure provisions that prohibited the sharing of Trafigura’s confidential information with third parties. These non-disclosure provisions did not contain carve-out language expressly permitting communications with law enforcement or regulators like the Commission.

B. Respondent

Trafigura Trading LLC, based in Houston, Texas, is an affiliate of a sophisticated multinational commodities trading firm that is one of the world’s largest independent traders of oil and oil products. During the Relevant Period, Trafigura actively traded physical and derivative oil products across major trading hubs in the United States, the Americas, Singapore, and elsewhere. With its affiliates, Trafigura is one of the world’s largest commodity traders, trading over 263 million metric tons of oil and oil products in fiscal year 2023, including approximately 31.9 million metric tons of fuel oil. Trafigura also is a major participant in the oil derivatives markets and other swaps markets. Neither Trafigura nor any of its affiliates has ever been registered with the Commission.

C. Facts

1. Market Background

The global oil markets include physical commodity flows among oil producers, refiners, shipping and storage facilities, and consumers. Many oil products are traded in these markets, including crude oil, distilled and refined products, and oil byproducts blended to various specifications that are used for a variety of purposes. These varied oil products travel across geographic regions before reaching distributors and end-user consumers. The United States is a world leader in the global markets for physical oil and oil products. Several significant oil trading hubs exist in the United States, including a trading hub in the U.S. Gulf Coast.

The physical flows of oil products around the world are linked in various physical and derivatives markets, including in the U.S. oil markets. Market participants use the derivatives markets, which include among other things futures, options, and swaps, to manage physical price exposures and to speculate on price trends. The United States is a world leader in the derivatives markets. Commission-registered or -designated entities in the United States and abroad offer and clear many derivative products tied to the prices of oil products. Reflecting the global nature of the oil markets, for example, the contract specifications of NYMEX's Light Sweet Crude Oil Futures Contract, a core referenced futures contract under Regulation 151.2(c)(2), 17 C.F.R. § 151.2(c)(2) (2023),² provide that delivery can be made using crude streams of domestic as well as foreign origin, such as northern Europe (Brent Blend or Oseberg Blend), Nigeria (Bonny Light or Qua Iboe), and Colombia (Cusiana).

Platts is a London-based price reporting agency that has offices in thirty-five countries, including the United States. Platts provides benchmark prices for a variety of energy-related products and markets throughout the world, including oil products. Benchmarks provided by Platts often serve as the underlying reference price for settlement of oil product derivatives such as swaps and futures. The benchmarks also are often used by market participants as a price reference for contracts for the sale of physical oil products. These contracts are generally set at an agreed-upon benchmark value, plus or minus a negotiated dollar differential that may reflect the quality of the product or other aspects of the trade.

The Platts benchmark with relevance here is assessed in the United States. Specifically, the Platts U.S. Gulf Coast High Sulfur Fuel Oil benchmark (the "USGC HSFO Benchmark") is assessed from Platts's offices in Houston, Texas. The benchmark is assessed by Platts using a "market-on-close" (MOC) methodology. Like other Platts benchmarks, Platts widely and globally reports the daily USGC HSFO Benchmark as part of its subscription market-reporting services. End-users and other market participants, including those in the United States, use this information as a price benchmark in industries such as shipping, bunker, and utilities, and as a reference price for the settlement of numerous derivatives.

² Under Commission Regulations, core referenced futures contracts are those that have particular "importance . . . to their respective underlying cash markets, including that they require physical delivery of the underlying commodity; and . . . to the national economy of the commodities underlying the . . . contracts." *See* Final Rule, Position Limits for Derivatives, 86 Fed. Reg. 3236, 3238 (Jan. 14, 2021).

Platts generally determines the USGC HSFO Benchmark for a given day based primarily on bids to purchase, offers to sell, and trades in U.S. Gulf Coast high-sulfur fuel oil during a defined period of time called the “window” that Platts authorized.³ With limited exceptions, Platts required participants that had entered into trades during the window to actually deliver physical HSFO to one another. Each day, before commencement of the trading window, Platts typically reported to market participants a market price level that typically served as a starting reference price at the beginning of the trading window for Platts-authorized market participants’ bids or offers. Platts typically determined the reference price in part based on information about trades or other market information that market participants reported to Platts. Platts widely reports the daily USGC HSFO Benchmark as part of its subscription market-reporting services, which information end-users and other market participants used as price benchmarks in the shipping and bunker industries.

Generally, physical oil prices, oil derivatives prices, and oil benchmark prices are interrelated. Derivatives products such as futures and swaps allow market participants to hedge physical transactions, manage price risks, conduct price discovery, and complement their physical trading activities. Benchmarks may serve as references both to physical trades, and to futures contracts and swaps that price in reference to the benchmarks. Such futures contracts trade on exchanges based in the United States, like NYMEX, a Designated Contract Market (“DCM”) owned by CME Group, Inc., and are cleared on registered Derivatives Clearing Organizations (“DCOs”), such as ICE Clear Europe Ltd. Similarly, swaps priced by reference to these benchmarks include those cleared through DCOs in the United States, as well as those not centrally cleared, but rather reported to the Commission through swap data repositories. At times, market participants use futures contracts to engage in exchange-for-physicals transactions, in which a futures position is traded for a physical commodity, and then the futures position is submitted for clearing by a DCO.

2. Trafigura’s Fraudulent and Manipulative Conduct

a. Gasoline Trading While in Possession of Confidential Information Improperly Obtained from Mexican Trading Entity

Between 2014 and April 2019, directly and through intermediaries, Trafigura improperly obtained material nonpublic information from an employee of the MTE in breach of that employee’s duties. For example, Trafigura was provided with documents that contained the pricing formulas used by the MTE to price and sell its physical gasoline to another trading entity in Mexico. At various times, Trafigura also received the MTE’s monthly import “program,” meaning the MTE’s total expected import volumes of gasoline, the types of gasoline to be imported in the forward month, and the destination ports for the gasoline. Trafigura also sometimes received competitor pricing information in the context of bilateral negotiations. The MTE considered the documents containing this information to be confidential and material. The information was also material to some of Trafigura’s trading and business decisions, such as formulating business and negotiation strategies and determining prices to offer for gasoline products. Certain Trafigura traders in Houston, Texas

³ As relevant to those benchmarks and the MOC process during the Relevant Period, the bids, offers, and trades reported in the USGC HSFO Benchmark window were generally for a trade size of 45,000 barrels. During the Relevant Period, market participants typically reported bids, offers, and trades through online chats or through an interface called the Platts eWindow.

entered into physical and derivative gasoline transactions while in knowing possession of this information.

The MTE employee shared the information with Trafigura in breach of duties to his employer as set forth in employment policies and agreements and for his benefit, including to improve his status within the MTE. Trafigura employees and traders knew or were reckless in not knowing that the information had been transmitted to them in violation of the MTE employee's duties to his employer. Certain Trafigura traders understood the sensitivity of the improperly obtained confidential information, and took steps to maintain it in confidence and ensure that the MTE would not learn they had it in their possession. Documents were sometimes hand-delivered from Mexico to the United States in paper format leaving no electronic record that Trafigura had the information. Trafigura traders in Houston did not tell their trading counterparts at the MTE that they had access to the information.

b. Manipulation of the USGC HSFO Benchmark in February 2017

Trafigura's physical trading activities included, among other things, transporting large amounts of physical oil across the world to take advantage of differing prices for the same product in different regions of the world. Because Trafigura had a separate trading book from its related Singaporean company, PTE, Trafigura would execute trades between itself and its related company in conjunction with transporting physical oil to or from the United States.

Trafigura held derivatives and physical trade positions in the United States that exposed Trafigura to fluctuations in the Platts price assessment for U.S. Gulf Coast high-sulfur fuel oil. Trafigura traders understood that Platts made price assessments for this fuel oil product based primarily on the trading activity in a daily trading window, a process through which market participants could submit bids, offers, and trades on set amounts of fuel oil.

In January 2017, Trafigura traders observed an open arbitrage for fuel oil between the U.S. Gulf Coast and Singapore that was estimated to be in excess of 10 million barrels. From approximately January to March 2017, Trafigura developed and deployed a large fuel oil export program designed to export fuel oil from the U.S. Gulf Coast to Singapore in order to profit from the open arbitrage. In connection with its arbitrage strategy, Trafigura established a long derivative position in U.S. Gulf Coast high-sulfur fuel oil, in part as an economic hedge for its anticipated purchases of physical fuel oil to export to Singapore. In January 2017, Trafigura traders entered into contracts for sale of approximately 3.5 million barrels of physical high-sulfur fuel oil from the American entity in Houston to its related company for delivery in Singapore in February, March, and April 2017. Trafigura sought to purchase physical barrels against the short physical position. Ultimately, the long derivative position entered into by Trafigura was in excess of its short physical position that resulted from plan to purchase fuel oil in the U.S. Gulf Coast for arbitrage—the excess essentially constituting a speculative position. The settlement value of Trafigura's long derivative position was based on the average of the daily Platts USGC HSFO Benchmark value for the 19 trading days during the month of February 2017.

Because Trafigura's long derivative position was larger than its short physical position, increases in the USGC HSFO Benchmark would benefit Trafigura because the gains from its derivative position would outweigh the increased prices it would need to pay for physical fuel oil. By bidding and purchasing physical fuel oil in the MOC window, Trafigura could execute trades that

could result in an increase in the USGC HSFO Benchmark. Because the USGC HSFO Benchmark was based on transactions in the MOC window, higher prices paid by Trafigura for fuel oil in the MOC window could increase the Benchmark. The increase in Benchmark price would benefit Trafigura's profits overall due to the application of leverage in its derivatives positions.

Beginning on February 1, 2017, and continuing through the end of the month, Trafigura bid heavily for and bought 80 cargoes (3.6 million barrels in total) of fuel oil in the Platts MOC trading window against its short physical position, an amount much larger than it had ever previously purchased in the window in a single month. Trafigura's heavy bidding and buying activity in that short period tended to increase prices paid in the MOC window, and ultimately contributed to an increase in the daily Platts USGC HSFO Benchmark value, which benefitted Trafigura's long derivatives position. Trafigura's near exclusive use of the Platts window to source large quantities of fuel oil in one month departed from its past conduct, and the large volume created artificially high USGC HSFO Benchmark values throughout February 2017 that were not reflective of ordinary forces of supply and demand. This impact on the USGC HSFO Benchmark was to the detriment of market participants who looked to rely on the benchmark as a fair price reference of physical or derivatives trades.

c. Non-Disclosure Agreements Impeded Employees' Communications with the Commission

Between July 31, 2017 and 2020, Trafigura required its employees to execute and requested that former employees execute agreements that contained broad non-disclosure provisions that prohibited sharing Trafigura's confidential information with third parties. The employment agreements and certain separation agreements defined "Confidential Information" broadly, and prohibited disclosing such information with no carve-out language that would have expressly permitted sharing information with the Commission or law enforcement (except to the extent required by law or court order) concerning possible violations of law, including the Act or Regulations. The language in these non-disclosure agreements thus purported to prohibit individuals from voluntarily and directly communicating directly with Commission staff about possible violations of the Act or Regulations.

The non-disclosure provisions described above led to confusion among certain current and former Trafigura employees that had the effect of impeding their direct and voluntary communications with the Commission.

* * *

Trafigura represents that it voluntarily undertook significant remedial steps to enhance its compliance program, including, but not limited to, developing and implementing enhanced, risk-based policies and procedures relating to market integrity, enhancing processes and controls around communications relating to market activity, investing additional resources in employee training and compliance testing, and enhancing ongoing compliance monitoring and controls testing processes.

III. LEGAL DISCUSSION

A. Deceptive Device or Contrivance in Violation of Section 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3)

Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2023), prohibit the use or attempted use of any deceptive device, untrue or misleading statements or omissions, or deceptive practice, in connection with any swap or contract of sale of any commodity in interstate commerce, or for future delivery. Specifically, Regulation 180.1(a)(1) and (3) makes it:

[U]nlawful . . . , directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly (1) [u]se . . . or attempt to use . . . any manipulative device, scheme, or artifice to defraud; . . . (3) [e]ngage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.

Section 6(c)(1) of the Act and Regulation 180.1(a) prohibit fraud or manipulative conduct. *CFTC v. Monex Credit Co.*, 931 F.3d 966, 976–77 (9th Cir. 2019) (holding, in the context of leveraged transactions, “We conclude that § 6(c)(1)’s language is unambiguous. Authorizing claims against ‘[m]anipulative or deceptive’ conduct means what it says: the CFTC may sue for fraudulently deceptive activity regardless of whether it was also manipulative”).

To establish fraud in violation of Section 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3), the Commission must establish that Respondent: (1) attempted to engage or engaged in prohibited fraudulent conduct (i.e., employed a manipulative device, scheme, or artifice to defraud; or engaged in a business practice that would operate as a fraud); (2) with scienter; and (3) in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity. *CFTC v. McDonnell*, 332 F. Supp. 3d 641, 717 (E.D.N.Y. 2018); *In re McVean Trading*, CFTC No. 17-15, 2017 WL 2729956, at *10 (June 21, 2017) (consent order); *see also CFTC v. S. Tr. Metals, Inc.*, 894 F.3d 1313, 1325 (11th Cir. 2018).

Trading commodities in interstate commerce or derivatives in knowing possession of material, nonpublic information disclosed in breach of a pre-existing duty violates Section 6(c)(1) and Regulation 180.1(a)(1) and (3). *See, e.g., In re Classic Energy LLC*, CFTC No. 19- 50, 2019 WL 4915492, at *3, *5–6 (Sept. 30, 2019) (consent order) (finding that introducing broker violated Section 6(c)(1) and Regulation 180.1 by misappropriating customer’s block trade order information to take the other side of those trades in his proprietary account in breach of a duty of confidentiality); *In re Motazedi*, CFTC No. 16-02, 2015 WL 7880066, at *2-3, *5–6 (Dec. 2, 2015) (consent order) (finding that trader violated Section 6(c)(1) and Regulation 180.1 by misappropriating and using employer’s trading information in breach of a duty of confidentiality to trade for his own benefit); *see also CFTC v. EOX Holdings LLC*, *CFTC v. EOX Holdings LLC*, No. 19-2901, at *22 (S.D. Tex. Sept. 30, 2021) (verdict partially overturned on other grounds by *CFTC v. EOX Holdings LLC*, 90 F.4th 439 (5th Cir. 2024)) (holding that the following elements must be established to have a violation of Section 6(c)(1) of the Act and Regulation 180.1: defendant “(1) misappropriated confidential information in breach of a pre-existing duty of trust and confidence to the source of the information;

(2) intentionally or recklessly, i.e., with scienter; (3) in connection with a contract for sale or purchase of a commodity in interstate commerce; (4) for personal benefit.”).

A trader violates Section 6(c)(1) and Regulation 180.1(a)(1) and (3) even when the trader himself does not owe a duty to the source of information, but receives material nonpublic information from another person, a tipper, and (1) the trader knows or should know that the tipper disclosed this information in breach of the tipper’s duty to the source in exchange for a personal benefit; and (2) the trader trades in knowing possession of that information (often referred to as “tippee” liability). *Dirks v. SEC*, 463 U.S. 646, 660 (1983); *Salman v. United States*, 580 U.S. 39 (2016) (explaining that direct or indirect personal benefits can include pecuniary or reputational benefits); *US v. Weller*, 40 F.4th 563, 566 (7th Cir. 2022) (allegation of friendship between tipper and tippee, along with breach of duty sufficient to infer personal benefit); *United States v. Whitman*, 904 F. Supp. 2d 363, 371 n. 7 (S.D.N.Y. 2012)(“[T]he benefit does not need to be financial or tangible in nature; it could include, for example, maintaining a useful networking contact, improving the reputation or power within the company, obtaining future financial benefits, or just maintaining or furthering a friendship.”). See also, e.g., *In re Freepoint Commodities LLC*, CFTC No. 24-02, 2023 WL 8785812, at *4 (Dec. 14, 2023) (consent order) (finding trading house’s deceptive scheme to use misappropriated nonpublic information in trading physical commodities and derivative products violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1)–(3)); *In re Tippett*, CFTC No. 23-03, 2022 WL 17090923, at *6 (Nov. 16, 2022) (consent order) (finding broker’s deceptive scheme to provide misappropriated nonpublic information to a trader in exchange for a personal benefit violated Section 4b of the Act and Regulation 180.1(a)(1) and (3)).⁴

For the reasons set forth above, Trafigura violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3).

B. Manipulation in Violation of Section 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3)

Section 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3) also prohibit, in connection with swaps, contracts of sale of a commodity in interstate commerce, and contracts for future delivery on or subject to the rules of any registered entity, engaging in manipulative trading. A trader commits manipulation in violation of Section 6(c)(1) and Regulation 180.1(a) when the trader intentionally or recklessly deceives or defrauds investors by, among other ways, controlling or artificially affecting the price of commodities or futures. *CFTC v. Kraft Foods Grp., Inc.*, 153 F. Supp. 3d 996, 1015 (N.D. Ill. 2015). Conduct showing an extreme departure from the standards of ordinary care which presents a danger of misleading buyers or sellers that is either known by the actor or so obvious that the actor must have been aware of it satisfies this standard. *Id.* “A market or price effect may well be indicia of the use or employment of a manipulative or deceptive device or contrivance;

⁴ See also, e.g., *In re Schultz*, CFTC No. 20-76, 2020 WL 5876731, at *4–6 (Sept. 30, 2020) (consent order) (finding that trader violated Section 6(c)(1) and Regulation 180.1(a)(1) and (3) by misappropriating employer’s confidential, nonpublic information and disclosing it to other individuals with the intent to personally benefit from the disclosure); see generally Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 Fed. Reg. 41,398, 41,399 (July 14, 2011) (Final Rules, “Rule 180.1 Rulemaking”) (“The Commission will be guided, but not controlled, by the substantial body of judicial precedent applying the comparable language of SEC Rule 10b-5.”). See also *SEC v. Obus*, 693 F.3d 276, 286–89 (2d Cir. 2012) (addressing tipper and tippee liability in context of SEC Rule 10b–5) (citations omitted).

nonetheless, a violation of final Rule 180.1 may exist in the absence of any market or price effect.” Rule 180.1 Rulemaking, 76 Fed. Reg. at 41,401.

In February 2017, Trafigura violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3) by engaging in manipulative trading activity relating to Platts’s USGC HSFO Benchmark. After compiling long derivative positions, Trafigura traders bid for and purchased USGC HSFO during the benchmark trading windows, which increased the relevant Platts benchmark, and consequently the value of Trafigura’s derivative positions that were priced by reference to the benchmark. Trafigura’s trading in the Platts window that month was carried out with at least reckless disregard for: (1) the artificial increase in the Platts assessments, or price, of fuel oil likely to result from the concentrated trading activity in the Platts window; and (2) the increased profitability of Trafigura’s derivative positions, which were in excess of Trafigura’s ultimate physical position, as a result of the trading. Trafigura’s trading was thus an extreme departure from the standards of ordinary care while trading in the USGC HSFO Platts window in February 2017 and presented a danger of misleading market participants who traded in that window or looked to rely on the Platts USGC HSFO benchmark.

C. Contracts Impeding Individuals from Communicating with Commission Staff in Violation of Section 23(h)–(j) of the Act and Regulation 165.19

Regulation 165.19(b), 17 C.F.R. § 165.19(b) (2023), implementing Section 23(h)-(j) of the Act, 7 U.S.C. § 26(h)–(j), makes it unlawful to “take any action to impede an individual from communicating directly with the Commission’s staff about a possible violation of the Commodity Exchange Act, including by enforcing, or threatening to enforce, a confidentiality agreement or pre-dispute arbitration agreement with respect to such communications.”

Between July 31, 2017 and 2020, Trafigura violated Regulation 165.19 by having employees and former employees sign non-disclosure agreements that did not include carve-out language expressly permitting communications with the Commission or law enforcement except to the extent required by law or court order. The language in these non-disclosure agreements purported to prohibit individuals from communicating directly with Commission staff about possible violations of the Act or Regulations. Such language facially prohibiting an individual from communicating with the Commission violates Regulation 165.19 even without any additional actions impeding communications. *Cf. In re J.P. Morgan Securities LLC*, SEC No. 34-99344, 2024 WL 178630, at *2–3 (Jan. 16, 2024) (consent order) (non-disclosure agreement with no law enforcement carve-out was sufficient to violate SEC’s analogous regulation); *In re CBRE, Inc.*, SEC No. 34-98429, 2023 WL 6125436, at *2–3 (Sept. 19, 2023) (consent order) (same); *In re MonoLith Resources, LLC*, SEC No. 34-98322, 2023 WL 5830481, at *2 (Sept. 8, 2023) (consent order) (same). These non-disclosure agreements had the effect of impeding voluntary and direct employee communications with Commission staff regarding possible violations of the Act and Regulations. By this conduct, Respondent violated Section 23(h)–(j) of the Act and Regulation 165.19.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Sections 6(c)(1) and 23(h)–(j) of the Act, 7 U.S.C. §§ 9(1) and 26(h)–(j), and Regulations 165.19 and 180.1(a)(1) and (3), 17 C.F.R. §§ 165.19 and 180.1(a)(1), (3) (2023).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which Respondent, without admitting or denying any of the findings or conclusions herein:

- A.** Acknowledges service of this Order;
- B.** Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C.** Waives:
 - 1.** The filing and service of a complaint and notice of hearing;
 - 2.** A hearing;
 - 3.** All post-hearing procedures;
 - 4.** Judicial review by any court;
 - 5.** Any and all objections to the participation by any member of the Commission’s staff in the Commission’s consideration of the Offer;
 - 6.** Any and all claims that Respondent may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2023), relating to, or arising from, this proceeding;
 - 7.** Any and all claims that Respondent may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104–121, §§ 201–253, 110 Stat. 847, 857–68 (codified as amended in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 - 8.** Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

- D. Acknowledges that the Commission is the prevailing party in this action for purposes of the waiver of any and all rights under the Equal Access to Justice Act, specified in subpart 6 of Paragraph C.
- E. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- F. Consents, solely on the basis of the Offer, to the Commission’s entry of this Order that:
 - 1. Makes findings by the Commission that Respondent violated Sections 6(c)(1) and 23(h)–(j) of the Act, 7 U.S.C. §§ 9(1), and 26(h)–(j), and Regulations 165.19 and 180.1(a)(1) and (3), 17 C.F.R. §§ 165.19 and 180.1(a)(1), (3) (2023);
 - 2. Orders Respondent to cease and desist from violating Sections 6(c)(1) and 23(h)–(j) of the Act, and Regulations 165.19 and 180.1(a)(1) and (3);
 - 3. Orders Respondent to pay a civil monetary penalty in the amount of fifty-five million dollars (\$55,000,000) within ten (10) business days of the date of entry of this Order; and
 - 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

* * *

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 6(c)(1) and 23(h)–(j) of the Act, 7 U.S.C. §§ 9(1) and 26(h)–(j), and Regulations 165.19 and 180.1(a)(1) and (3), 17 C.F.R. §§ 165.19 and 180.1(a)(1), (3) (2023);
- B. Respondent shall pay a civil monetary penalty in in the amount of fifty-five million dollars (\$55,000,000), within ten (10) business days of the date of entry of this Order (the “CMP Obligation”). If the CMP Obligation is not paid in full or otherwise satisfied within ten business days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic

funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact the Federal Aviation Administration at the above email address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondent and the name and docket number of this proceeding. The Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

C. Respondent and its successors and assigns shall comply with the following conditions and undertakings (the “Undertakings”) set forth in the Offer:

1. Public Statements

Respondent agrees that neither Respondent nor any of Respondent’s successors and assigns, agents, or employees under Respondent’s authority or control shall take any action or make any public statement on behalf of Respondent or any of Respondent’s affiliates denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent’s: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and Respondent’s successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement. The parties understand and agree that, to the extent that the Commission brings an enforcement action against any employee or agent of Respondent arising from the same nexus of facts as this Order, this provision shall not apply to actions or public statements by such employee made in connection with that enforcement action.

2. Cooperation with the Commission

Respondent shall cooperate fully and expeditiously with the Commission, including the Division, in connection with this action and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter

related to or arising from, this action. As part of such cooperation, Respondent agrees to do the following for a period of three (3) years from the date of the entry of this Order, or until all related investigations and litigations in which the Commission, including the Division, is a party, are concluded, including through the appellate review process, whichever period is longer:

- a.** Preserve all records relating to the subject matter of this proceeding, including, but not limited to, audio files, electronic mail, other documented communications, and trading records;
- b.** Comply fully, promptly, completely, and truthfully with all inquiries and requests for non-privileged information or documents;
- c.** Provide authentication of documents and other evidentiary material;
- d.** Provide copies of non-privileged documents within Respondent's possession, custody, or control, subject to applicable laws and regulations;
- e.** Subject to applicable laws and regulations, including the laws and regulations of foreign states, make Respondent's reasonable efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondent, regardless of the individual's location, and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission 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 proceeding, trial, or investigation;
- f.** Subject to applicable laws and regulations, including the laws and regulations of foreign states, make Respondent's reasonable efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee, or agent of any Respondent; and
- g.** Respondent also agrees that it will not undertake any act that would limit their ability to cooperate fully with the Commission. Respondent will designate an agent located in the United States of America to receive all requests for information pursuant to these Undertakings, and shall provide notice regarding the identity of such Agent to the Division upon entry of this Order. Should Respondent seek to change the designated agent to receive such requests, notice of such intention shall be given to the Division fourteen (14) days before it occurs. Any person designated to receive such request shall be located in the United States of America.

3. Modification of Non-Disclosure Provisions

Respondent agrees to modify non-disclosure provisions in its employment, termination, and severance agreements (“Agreements”) to include language making clear that no term in any such Agreement should be understood to limit or prevent the filing of a complaint with; or voluntary, lawful communication with; or disclosure of information to any federal, state, or local governmental regulatory or law enforcement agency.

4. Partial Satisfaction

Respondent understands and agrees that any acceptance by the Commission of any partial payment of the CMP Obligation shall not be deemed a waiver of Respondent’s obligation to make further payments pursuant to this Order, or a waiver of the Commission’s right to seek to compel payment of any remaining balance.

5. Change of Address/Phone

Until such time as Respondent satisfies in full the CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.

6. Bankruptcy Notice

Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondent’s debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

7. Other Notice to the Commission


All notices required to be given to the Commission by any provision in this Order, except for a bankruptcy notice, shall be sent by certified mail, return receipt requested, as follows:

Robert T. Howell
Deputy Director, Division of Enforcement
Commodity Futures Trading Commission
77 W Jackson Boulevard, Suite 800
Chicago, IL 60604

* * *

The provisions of this Order shall be effective as of this date.

By the Commission.

A handwritten signature in black ink, appearing to read "Robert N. Sidman". The signature is written in a cursive style with a horizontal line underneath it.

Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: June 17, 2024