

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)

Emilio José Heredia Collado,)

Respondent.)

_____)

CFTC Docket No. 21-04

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Office of Proceedings
Proceedings Clerk

7:03 am, Mar 25, 2021

**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 Emilio José Heredia Collado (“Heredia” or “Respondent”) has violated Sections 6(c)(3) and 9(a)(2) of the Act, 7 U.S.C. §§ 9(3), 13(a)(2) (2018), and Regulation 180.2, 17 C.F.R. § 180.2 (2020) 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. Respondent admits the facts set forth below, acknowledges that his conduct violated the Act and Regulations, admits the Commission’s jurisdiction over him and the subject matter of these proceedings, 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.

II. FINDINGS

The Commission finds the following:

A. Summary

From as early as June 2012 through at least August 2016 (“Relevant Period”), while employed as a fuel oil trader in the San Francisco office of a commodity trading firm (“Company A”) and then the U.S. affiliate of a multinational commodity trading company (“Company B”) that acquired Company A (collectively, the “Trading Company”), Respondent and others at the Trading Company sought to increase profits from its oil products trading by manipulating a U.S.

price-assessment benchmark relating to physical fuel oil products. Respondent and others engaged in the manipulation to benefit the Trading Company's trading positions.

Respondent engaged in the manipulation, and directed and induced personnel under his supervision to engage in the manipulation, in order to manipulate the benchmark prices of fuel oil products reported by S&P Global Platts ("Platts"), a price reporting agency, for the purpose of benefiting the Trading Company's related trading positions, including more than approximately 100 multimillion-dollar oil-product trades with a large, state-owned enterprise (the "SOE") that were priced in reference to a Platts benchmark. Respondent engaged in this conduct with the specific intent to manipulate the price of a commodity in interstate commerce and to create artificial prices, and Respondent could and did create artificial prices. By this conduct, Respondent engaged in attempted manipulation and manipulation, in violation of Sections 6(c)(3) and 9(a)(2) of the Act, 7 U.S.C. §§ 9(3), 13(a)(2) (2018), and Regulation 180.2, 17 C.F.R. § 180.2 (2020).

* * * * *

In accepting Respondent's Offer, the Commission recognizes Respondent's entry into a formal cooperation agreement ("Cooperation Agreement") with the Division of Enforcement ("Division"), which sets forth the terms of his agreement to cooperate with the Commission and the Division in connection with any investigation, litigation, or proceeding to which the Commission is a party relating to the subject matter of this Order and/or as described in the Cooperation Agreement.

B. Respondent

Emilio José Heredia Collado is a former fuel oil trader who resides in California. Throughout the Relevant Period, Heredia was a trader at the Trading Company. Heredia has never been registered with the Commission.

C. Facts

During the Relevant Period, Respondent engaged in and oversaw trading of a variety of oil products on behalf of the Trading Company, including fuel oil and bunker fuel, a type of fuel oil.

1. The Trading Activity and Benchmark Exposure

Among other things, the Trading Company's trading activities engaged in or overseen by Respondent included large-quantity trades, sometimes called "cargos," of fuel oil. Respondent also oversaw smaller-quantity trades of bunker fuel, sometimes called "bunkers," typically with end-users such as ship owners. Among the cargo trades engaged in or overseen by Respondent were numerous cargo trades with the SOE (the "Cargo Trades"), including those for delivery to and from the Los Angeles market.

During the Relevant Period, more than approximately 100 Cargo Trades with the SOE were priced in reference to a benchmark price assessment determined by Platts called the Bunker Fuel Oil 380 CST 3.5% Ex-Wharf Los Angeles (the "Los Angeles Bunker Benchmark"), plus or

minus a specified dollar amount negotiated by the parties, on specified days (“Cargo Pricing Days”). Like other Platts benchmarks, Platts widely reported the daily Los Angeles Bunker 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.

During the Relevant Period, Platts generally determined the Los Angeles Bunker Benchmark for a given day based primarily on bids to purchase, offers to sell, and trades in bunker fuel during a defined period of time called the “window” that Platts-authorized market participants reported to Platts, and which Platts then widely reported to subscribers.¹ Each day, before commencement of the trading window, Platts typically reported to market participants a market price level referred to as the “peg.” The peg typically served as the starting price at the beginning of the trading window for Platts-authorized market participants’ bids or offers. Platts typically determined the peg in part based on information about trades or other market information that market participants such as the Trading Company reported to Platts.

On Cargo Pricing Days the Trading Company’s trading positions generally had significant price exposure to the Los Angeles Bunker Benchmark. When the Cargo Trades were sales by the Trading Company to the SOE, the Trading Company’s Cargo Trade position would be more profitable if the average Los Angeles Bunker Benchmark on the Cargo Pricing Days was higher: if the Los Angeles Bunker Benchmark rose, the Trading Company would sell to the SOE at a higher price. Conversely, when the Cargo Trades were purchases by the Trading Company from the SOE, the Trading Company’s Cargo Trade positions would be more profitable if the average Los Angeles Bunker Benchmark on the Cargo Pricing Days was lower: if the Los Angeles Bunker Benchmark fell, the Trading Company would buy from the SOE at a lower price.

2. The Manipulation

During the Relevant Period, Respondent and others at the Trading Company manipulated the Los Angeles Bunker Benchmark in order to increase the Trading Company’s profits on the Cargo Trades priced by reference to the benchmark, including by distorting the prices of the Cargo Trades in the Trading Company’s favor. Typically, in furtherance of the manipulation, Respondent, or others at the Trading Company acting in concert with Respondent, submitted generally increasing bids or generally decreasing offers to Platts during the trading window, which Platts then reported to its subscribers. By such conduct, Respondent and others at the Trading Company intended to create, and did create, artificially high (or artificially low) Los Angeles Bunker Benchmarks on Cargo Pricing Days not reflective of legitimate forces of supply and demand, so that the Trading Company could sell cargos to the SOE at artificially high prices (or buy cargos from the SOE at artificially low prices). Respondent engaged in the price manipulation, directed and induced personnel under his supervision to engage in the price manipulation, and observed others at the Trading Company engaging in such conduct with respect to one or more Platts benchmarks. As a result of the manipulation, the Trading Company earned significant additional profits or savings.

¹ As relevant to the Los Angeles Bunker Benchmark during the Relevant Period, the bids, offers, and trades reported in the Los Angeles Bunker Benchmark window were generally for a trade size of 1,000 metric tons of bunker fuel.

3. Examples

The following are two examples of the manipulation. In each example, Respondent acted with the intent to manipulate the benchmark and create an artificial price, and succeeded in creating artificial prices.

First, in or around May 2013, the Trading Company entered into a Cargo Trade for the sale of approximately 40,000 metric tons of fuel oil to the SOE, priced by reference to the average Los Angeles Bunker Benchmark on May 28, 29, and 30, 2013. Respondent directed a Trading Company employee to submit bids to Platts during the window, and to increase the prices of those bids approximately 27 times on May 28, 23 times on May 29, and 9 times on May 30, 2013. This trading activity led to an artificial Los Angeles Bunker Benchmark on each day that was significantly higher than the day's starting peg, to the benefit of the Trading Company's positions in the Cargo Trade that priced on those days.² The Trading Company's activity in the window on the Cargo Pricing Days of May 28, 29, and 30, 2013, resulted in improper additional revenue to the Trading Company of several hundred thousand dollars.

Second, in or around October 2015, the Trading Company entered into two Cargo Trades together consisting of the purchase of approximately 40,000 metric tons of fuel oil from the SOE. Both trades were priced in reference to the average daily Los Angeles Bunker Benchmark on October 23, 26, and 27, 2015. Respondent directed a Trading Company employee to submit offers to Platts during the window, and to decrease the prices of those offers approximately 39 times on October 23, 38 times on October 26, and 22 times on October 27, 2015. This trading activity led to an artificial Los Angeles Bunker Benchmark on each day that was significantly lower than the day's starting peg, to the benefit of the Trading Company's positions in the Cargo Trades that priced on those days.³ The Trading Company's activity in the window on the Cargo Pricing Days of October 23, 26, and 27, 2015, resulted in improper savings to the Trading Company of more than several hundred thousand dollars.

4. Cooperation

Respondent has entered into the Cooperation Agreement with the Division setting forth the terms of his agreement to cooperate with the Commission and the Division in connection with any investigation, litigation, or proceeding to which the Commission is a party relating to the subject matter of this Order and/or as described in the Cooperation Agreement.

² On May 28, 2013, Platts assessed the Los Angeles Bunker Benchmark at or around \$26.50 above the day's starting peg of \$585 per metric ton. On May 29, 2013, Platts assessed the Los Angeles Bunker Benchmark at \$23.00 above the day's starting peg of \$607.50 per metric ton. And on May 30, 2013, Platts assessed the Los Angeles Bunker Benchmark at \$8.50 above the day's starting peg of \$628.50 per metric ton. The Los Angeles Bunker Benchmark thus was assessed at an average of \$19.33 above the peg on those three days.

³ On October 23, 2015, Platts assessed the Los Angeles Bunker Benchmark at \$39.50 below the day's starting peg of \$230 per metric ton. On October 26, 2015, Platts assessed the Los Angeles Bunker Benchmark at \$38.00 below the day's starting peg of \$230 per metric ton. On October 27, 2015, Platts assessed the Los Angeles Bunker Benchmark at \$22.00 below the day's starting peg of \$210 per metric ton. The Los Angeles Bunker Benchmark was assessed at an average of \$33.17 below the peg on those three days.

III. LEGAL DISCUSSION

A. Price Manipulation in Violation of Sections 6(c)(3) and 9(a)(2) of the Act, and Regulation 180.2

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, or for future delivery on or subject to the rules of any registered entity.” 7 U.S.C. § 13(a)(2) (2018).

Section 6(c)(3) of the Act, 7 U.S.C. § 9(3) (2018), prohibits the manipulation or attempted manipulation of the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, and Regulation 180.2 makes it “unlawful . . . directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.” 17 C.F.R. § 180.2 (2020).

Respondent specifically intended to manipulate the Los Angeles Bunker Benchmark, in order to benefit, among other things, the Trading Company’s contracts with SOE that were priced in reference to the Los Angeles Bunker Benchmark. In furtherance of that intent, Respondent, directly and indirectly (such as through others), submitted bids, offers, and trades to Platts during the Los Angeles Bunker Benchmark trading window in order to skew the Platts benchmark, and consequently the value of the Trading Company’s Cargo Trade positions that were priced in reference to the benchmark, in the Trading Company’s favor. Through these actions, Respondent and others at the Trading Company could and did cause artificial prices in the Los Angeles Bunker Benchmark and thus the Cargo Trades. By this conduct, Respondent violated Sections 6(c)(3) and 9(a)(2) of the Act and Regulation 180.2.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Sections 6(c)(3) and 9(a)(2) of the Act, 7 U.S.C. §§ 9(3), 13(a)(2) (2018), and Regulation 180.2, 17 C.F.R. § 180.2 (2020).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which Respondent:

- 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.** Admits to all of the findings made in this Order;
- D.** 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 defense based on the statute of limitations applicable to any charges brought, including any sanctions or relief, in connection with this Order;
 6. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 7. Any and all claims that Respondent may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018) and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2020), relating to, or arising from, this proceeding;
 8. 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
 9. 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;
- 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 to additional proceedings to determine what, if any, additional sanctions or relief may be assessed against him, as provided in Part VI.B of this Order. In connection with such additional proceedings, Respondent further consents that: (a) the findings of fact in Section II of this Order shall be accepted as and deemed true by the Presiding Officer; (b) Respondent will be precluded from arguing that Respondent did not violate the federal laws as described in Sections III and IV of this Order; and (c) Respondent may not challenge the validity of Respondent's consents and agreements in the Offer or this Order; and
- G.** 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)(3) and 9(a)(2) of the Act, 7 U.S.C. §§ 9(3), 13(a)(2) (2018), and Regulation 180.2, 17 C.F.R. § 180.2 (2020);

2. Orders Respondent to cease and desist from violating Sections 6(c)(3) and 9(a)(2) of the Act, and Regulation 180.2;
3. Orders Respondent to pay a civil monetary penalty in the amount of one hundred thousand dollars (\$100,000), plus post-judgment interest, within twenty (20) days of the date of entry of this Order (the “CMP Obligation”);
4. Orders that Respondent be permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018), and all registered entities shall refuse Respondent trading privileges; and
5. Orders Respondent 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)(3) and 9(a)(2) of the Act, 7 U.S.C. §§ 9(3), 13(a)(2) (2018), and Regulation 180.2, 17 C.F.R. § 180.2 (2020);
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred thousand dollars (\$100,000), plus post-judgment interest, within twenty (20) business days of the date of entry of this Order. If the CMP Obligation is not paid in full or otherwise satisfied within twenty 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 (2018).

Respondent acknowledges that the Commission is imposing the CMP Obligation at this time based upon his cooperation in a Commission investigation and any investigation, litigation, or proceeding to which the Commission is a party relating to the subject matter of this Order and/or as described in the Cooperation Agreement (collectively, the “Proceedings”), pursuant to the terms of the Cooperation Agreement, and his undertaking to continue to cooperate pursuant to the terms of the Cooperation Agreement, and as set forth below in Part VII.D.3. If at any time the Division obtains information indicating that Respondent, following the entry of this Order: (i) knowingly provided materially false or misleading information or materials to the Commission in the investigation, this proceeding or in a related proceeding, or the Proceedings; or (ii) violated the terms of his Cooperation Agreement with the Division—such as his commitment

to continue to cooperate—the Division may, at its sole discretion and without prior notice to Respondent, petition the Commission to re-open this matter and seek an order imposing further sanctions or relief, such as directing that Respondent pay a different civil monetary penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether he knowingly provided materially false and misleading information, or violated the terms of his Cooperation Agreement with the Division, but he may not: (1) contest the findings in this Order; or (2) assert any defense to liability or remedy, including but not limited to any statute of limitations defense.

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
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above 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 is permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018)), and all registered entities shall refuse Respondent trading privileges.
- D. **Respondent shall comply with the following conditions and undertakings set forth in the Offer:**
 - 1. **Public Statements**

Respondent agrees that neither Respondent nor any of Respondent's agents or employees under Respondent's authority or control shall take

any action or make any public statement 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 shall comply with this agreement, and shall undertake all steps necessary to ensure that all of Respondent's agents and/or employees under Respondent's authority or control understand and comply with this agreement.

2. Respondent agrees that Respondent shall never, directly or indirectly:
 - a. enter into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2020), for Respondent's own personal account(s) or for any account(s) in which Respondent has a direct or indirect interest;
 - b. have any commodity interests traded on Respondent's behalf;
 - c. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
 - d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
 - e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2020); and/or
 - f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2020)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2018)), registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9).

3. **Cooperation with the Commission**

Respondent shall cooperate fully and expeditiously with the Commission, including the Division, in accordance with the terms set forth in the Cooperation Agreement, and in any investigation, civil litigation, or administrative proceeding to which the Commission is a party related to the subject matter of this action or any current or future Division

investigation or Commission action related thereto. As part of such cooperation, Respondent agrees to:

- a.** preserve and produce to the Commission in a responsive and prompt manner as requested by Division staff, all relevant non-privileged documents, information, and other materials wherever located, in the appropriate possession, custody, or control of Respondent;
- b.** use Respondent's knowledge and skill to explain transactions, interpret information and terminology or identify new and productive lines of inquiry;
- c.** prepare and appear for interviews and testimony at such times and places as requested by Division staff;
- d.** respond completely and truthfully to all inquiries and interviews, when requested to do so by Division staff;
- e.** identify and authenticate relevant documents, execute affidavits or declarations, and testify completely and truthfully at depositions, trial, and other judicial proceedings, when requested to do so by Division staff;
- f.** enter into tolling agreements, when requested to do so by Division staff, during the period of cooperation;
- g.** waive any defense based on the statute of limitations applicable to any charges brought in connection with the Proceedings;
- h.** accept service by mail, electronic mail, or facsimile transmission of notices or subpoenas for documents and/or testimony at depositions, hearings, trials, or in connection with the Proceedings;
- i.** appoint Respondent's attorney(s) as agent to receive service of such notices and subpoenas;
- j.** waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules in connection with requests or subpoenas of Division staff; and
- k.** serve by hand delivery or by next-day mail all written notices and correspondence required by or related to this Agreement to the Director of the Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Three Lafayette Centre, Washington, DC 20581, with copy by e-mail to the Deputy Director of the Division of Enforcement, Eastern Regional Office, unless otherwise directed in writing by Division staff.

4. Partial Satisfaction

Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's 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.

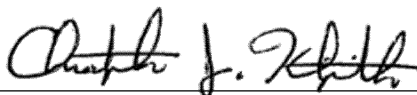
5. Change of Address/Phone

Until such time as Respondent satisfies in full his obligations as set forth in the Cooperation Agreement and this Order, Respondent shall provide written notice to the Commission by certified mail of any change to Respondent's telephone number and mailing address within ten (10) calendar days of the change.

* * *

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

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: March 25, 2021