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UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of: **Glencore International AG,** **Glencore Ltd., and** **Chemoil Corporation,** **Respondents.**	**CFTC Docket No. 22-16**

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 Glencore International AG, Glencore Ltd., and Chemoil Corporation (collectively, "Glencore" or "Respondents") have, for conduct occurring on or after August 15, 2011 to at least 2018 ("Charging Period"), violated Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), and 9(a)(2) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13(a)(2), and Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1, 180.2 (2021) 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 Respondents 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, Respondents have submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, except to the extent that Respondents admit those findings in any related action against Respondents by, or any agreement with, the United States Department of Justice ("DOJ") or any other governmental agency or offices, and admit those findings in *In re Emilio Heredia Collado*, CFTC No. 21-04, 2021 WL 2182105 (Mar. 25, 2021) (consent order), Respondents consent 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 acknowledge service of this Order.[1]

II. FINDINGS

The Commission finds the following:

A. Summary

Glencore is a Switzerland-based commodity trading and producing multinational conglomerate that is among the largest companies of its kind in the world. Its significant physical and derivative oil trading operations are conducted worldwide, including substantial trading operations based in New York, New York, and San Francisco, California. From approximately 2007 to at least 2018 (the "Relevant Period"), Glencore engaged in a scheme to manipulate oil markets and defraud other market participants through corruption and misappropriation of material nonpublic information, designed to increase profit and decrease losses from physical and derivatives trading.

Glencore's conduct during the Relevant Period involved the manipulation or attempted manipulation of price assessments of various fuel oil products published by S&P Global Platts ("Platts"), a price-reporting agency, and derivatives such as futures and swaps that settled by reference to those assessments, including derivatives traded on United States exchanges such as the New York Mercantile Exchange ("NYMEX") and ICE Futures U.S. Inc. During the Relevant Period and the Charging Period, Glencore had derivatives and physical trade positions, including positions held in the United States, that exposed Glencore to fluctuations in the Platts price assessments. Glencore traders understood that Platts made price assessments of various fuel oil products 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 particular oil products. On certain days on which Glencore had significant exposure to these Platts price assessment benchmarks, Glencore traders placed bids or offers in the relevant trading window with the intent of pushing or controlling the results of the trading window, and thus Platts's price assessments, in a direction and manner intended to benefit Glencore's exposure arising from its associated physical and/or derivatives positions. Glencore engaged in this scheme on hundreds of days during the Relevant Period and the Charging Period in order to manipulate Platts price assessments connected to four fuel oil products, and the associated derivatives, in three different United States geographic markets.

Glencore's conduct during the Relevant Period also involved fraud, corrupt payments (e.g., bribes and kickbacks) to employees and agents of certain state-owned entities ("SOEs"),

[1] Respondents consent 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 agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondents do 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. Respondents do 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.

including in Brazil, Cameroon, Nigeria, and Venezuela, and misappropriation of confidential information from employees and agents of certain SOEs, including in Mexico. Glencore or its affiliates made the corrupt payments in exchange for improper preferential treatment and access to trades of oil and oil products with the SOEs. Glencore's conduct was intended to and did secure unlawful competitive advantages in trading physical oil products and related derivatives to the detriment of its counterparties and market participants, including those located in the United States.

Glencore's manipulative, fraudulent, and corrupt conduct involved traders and other personnel throughout its oil trading group, including senior traders, desk heads, and supervisors up to and including the global head of the oil group, and resulted in hundreds of millions of dollars in improper gains.

Glencore's manipulative and deceptive conduct undermined the legitimate forces of supply and demand and the integrity of the global physical and derivatives oil markets, including in the CFTC regulated U.S. derivatives markets and related physical markets.

B. Respondents

Glencore is a sophisticated, multinational energy and commodities trading firm that is one of the world's largest global diversified natural resource companies and a global trader of oil and oil products. Affiliates comprising Glencore include, among others, **Glencore Ltd.**, based in New York, New York; **Glencore International AG**, based in Baar, Switzerland; and **Chemoil Corporation**, based in New York, New York, with operations in California, among other places. During the Relevant Period and the Charging Period, Glencore actively traded physical and derivatives oil products across major trading hubs in the United States, the Americas, and beyond. Neither Glencore 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. Numerous 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 flow 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. Significant trading hubs in the United States include, among others, the U.S. West Coast, the U.S. Atlantic Coast, and 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 entities in the United States and abroad offer and clear many derivatives 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) (2021),[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 physical contracts. 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 benchmarks with relevance here are assessed in the United States. Specifically, the Platts Los Angeles Bunker Fuel Oil 380 CST 3.5% Ex-Wharf benchmark (the "Los Angeles Bunker Benchmark"), the Platts New York Harbor No. 6 1% Fuel Oil benchmark (the "New York LSFO Benchmark"), the Platts New York Harbor No. 6 3% Fuel Oil benchmark (the "New York HSFO Benchmark") and the Platts U.S. Gulf Coast High Sulfur Fuel Oil benchmark (the "USGC HSFO Benchmark") are assessed from Platts's offices in Houston, Texas. The benchmarks are assessed by Platts using a "market-on-close" (MOC) methodology. Like other Platts benchmarks, Platts widely and globally reported these daily benchmarks as part of its subscription market-reporting services. End-users and other market participants, including those in the United States, used this information as price benchmarks in industries such as shipping, bunker, and utilities, and as reference prices for the settlement of numerous derivatives.

During the Relevant Period, Platts generally determined the benchmarks for a given day based primarily on bids to purchase, offers to sell, and trades in the relevant product 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.[3] With limited exceptions, Platts generally required physical performance of window trades. 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 a starting reference price at the beginning of the trading window for Platts-authorized market participants' bids or offers. Platts typically

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[2] Under CFTC 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).

[3] As relevant to those benchmarks and the MOC process 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; in the New York LSFO Benchmark and New York HSFO Benchmark windows, for a trade size of 50,000 barrels; and in the USGC HSFO Benchmark window, for a trade size of 45,000 barrels. During the Charging Period, market participants typically reported bids, offers, and trades through online chats or through an interface called the Platts eWindow.

determined the peg in part based on information about trades or other market information that market participants such as Glencore reported to Platts.

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. Glencore's Manipulative and Fraudulent Conduct

One of the world's largest commodity traders, Glencore typically trades more than one billion barrels of physical oil and oil products each year. Glencore also is a major participant in the oil derivatives markets and other swaps markets. During the Relevant Period, Glencore traded trillions of dollars notional value of derivatives such as futures contracts and swaps, including, for example, interest rate swaps, cross currency swaps, and oil and oil product swaps, including with U.S. counterparties and swap dealers registered with the Commission. As part of its business, Glencore often entered into related physical and/or derivatives positions in groups of connected trades called "strategies."

Glencore's oil trading group was active in the United States as well as various locations around the world, including the United Kingdom, Asia, Africa, and South America.

a. Manipulation

i. Trading Activity and Benchmark Exposures

Glencore's physical trading activities included, among other things, large-quantity trades, sometimes called "cargos," of fuel oil. Glencore also traded smaller-quantity trades of bunker fuel, sometimes called "bunkers," typically with end-users such as ship owners. Among the cargo trades engaged in by Glencore were numerous cargo trades with a Mexico-based SOE (the "Cargo Trades"), including those for delivery to and from the Los Angeles market. A senior trader ("Trader-1") based in San Francisco engaged in and oversaw these trades.

During the Relevant Period, more than approximately 100 Cargo Trades with the SOE were priced by reference to the Platts Los Angeles Bunker Benchmark. The price of the Cargo Trades was determined by the average of the daily benchmark price on specified days ("Cargo Pricing Days"), plus or minus a specified dollar amount negotiated by the parties. 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.

On Cargo Pricing Days, Glencore's trading positions generally had significant price exposure to the Los Angeles Bunker Benchmark. When the Cargo Trades were sales by Glencore to the SOE, Glencore'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, Glencore would sell to the SOE at a higher price. Conversely, when the Cargo Trades were purchases by Glencore from the SOE, Glencore'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, Glencore would buy from the SOE at a lower price.

Between in or around December 2012 and in or around January 2016, Glencore and the SOE entered into a coordinated, informal "joint venture" (the "JV") by which (a) the SOE would purchase fuel oil cargos from a counterparty (the "JV Cargo Trades") priced by reference to the Los Angeles Bunker Benchmark on specified days (the "JV Pricing Days"), (b) Glencore would sell to the SOE an oil product sometimes referred to as "cutter stock" for blending with the fuel oil obtained through the JV Cargo Trades, and (c) the SOE would sell the resulting blend into the Singapore market. Glencore and the SOE coordinated the planning and sharing of profits of the venture. The JV thus generally had significant price exposure to the Los Angeles Bunker Benchmark. The JV Cargo Trade positions would be more profitable if the average Los Angeles Bunker Benchmark on the JV Pricing Days was lower: if the Los Angeles Bunker Benchmark fell, the SOE would buy from its counterparty at a lower price, generating more profit to be shared by Glencore and the SOE.

In the U.S. Gulf Coast and New York Harbor markets, in addition to physical cargos and bunkers, Glencore's trading activities included derivatives such as futures and swaps that settled based on the average daily benchmark assessment for a given month or portion thereof.[4] Like other Platts benchmarks, Platts widely and globally reported these benchmarks as part of its subscription market-reporting services, which information end-users and other market participants used as price benchmarks. At times during the Charging Period, Glencore's physical and derivatives trading positions had significant price exposure to the New York LSFO Benchmark, the New York HSFO Benchmark, or the USGC HSFO Benchmark, and Glencore traders sometimes increased their positions in derivatives such as futures and swaps, thereby amplifying their exposure, and thus potential profit from manipulating the benchmarks, rather than using the derivatives to offset Glencore's exposure to the relevant benchmark.

[4] For example, certain "BALMO" products, short for "balance of month"—such as the Gulf Coast HSFO (Platts) BALMO Futures contract traded on NYMEX and the USGC HSFO (Platts) Balmo Futures contract traded on ICE Futures U.S., Inc.—are settled by reference to the average daily price assessment beginning at a selected start date through the end of the month.

ii. Manipulation of the Benchmarks and Associated Futures and Swaps

During the Relevant Period, on hundreds of occasions, Glencore manipulated or attempted to manipulate the Los Angeles Bunker Benchmark, and attempted to manipulate the U.S. Gulf Coast HSFO Benchmark, the New York Harbor LSFO Benchmark, and the New York Harbor HSFO Benchmark, and thereby the derivatives such as swaps and futures that settled to the benchmarks, in order to increase Glencore's profits (or reduce losses) from its derivatives and physical trades that priced by reference to the benchmark. Such trading conduct was a regular practice at Glencore, and supervisors were aware of and at times directly involved in the conduct.

In the Los Angeles fuel oil market, Glencore did so in order to increase Glencore's profits on the Cargo Trades and JV Cargo Trades priced by reference to the Los Angeles Bunker Benchmark, including by distorting the prices of the Cargo Trades in Glencore's favor, and by distorting the prices of the JV Cargo Trades in the JV's favor. Typically, in furtherance of the manipulation, Glencore submitted generally increasing bids or generally decreasing offers to Platts during the trading window, which Platts then reported to its subscribers. In addition, Glencore personnel at times conveyed misleadingly incomplete, "cherrypicked," or inaccurate information to Platts outside the window, such as information regarding Glencore personnel's purported views of the market conditions or of supply and demand, knowing that such information could and did influence Platts's assessment. By such conduct, Glencore intended to create, and did create, artificially high (or artificially low) Los Angeles Bunker Benchmarks on Cargo Pricing Days and JV Pricing Days not reflective of legitimate forces of supply and demand, so that Glencore could sell cargos to the SOE at artificially high prices (or so that Glencore could buy cargos from the SOE at artificially low prices).

In the U.S. Gulf Coast and New York Harbor fuel oil markets, Glencore engaged in the manipulative conduct in order to increase Glencore's profits (or reduce losses) from its net exposure to the U.S. Gulf Coast HSFO Benchmark, the New York Harbor LSFO Benchmark, and the New York Harbor HSFO Benchmark arising from derivatives such as futures and swaps, as well as from physical trades priced by reference to the benchmarks. Typically, in furtherance of the manipulative conduct, as in the West Coast, during months when its net exposure to the benchmark was significant, Glencore submitted generally increasing bids or generally decreasing offers to Platts during the trading window, which Platts then reported to its subscribers. By such conduct, Glencore intended to create artificially high (or artificially low) benchmarks not reflective of legitimate forces of supply and demand, so that Glencore's derivatives and physical positions would settle or price at levels more favorable to Glencore.

As a result of the manipulative conduct, Glencore earned millions of dollars in additional profits or savings.

iii. Examples

The following are examples of the hundreds of instances of manipulative conduct in the U.S. West Coast, U.S. Gulf Coast, and New York Harbor markets. Glencore acted with the intent to manipulate the relevant benchmarks, and in the U.S. Gulf Coast and New York Harbor markets, derivatives priced by reference to the relevant benchmarks, and to create an artificial price, and at times succeeded in creating artificial prices.

Los Angeles. In or around May 2013, Glencore 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. Trader-1 directed a Glencore employee to submit bids to Platts during the window, and to increase the prices of those bids. The Glencore employee did so 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 Glencore's positions in the Cargo Trade that priced on those days.[5] Glencore's activity in the window on the Cargo Pricing Days of May 28, 29, and 30, 2013, resulted in substantial improper additional revenue to Glencore.

Los Angeles. In or around October 2015, Glencore 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 by reference to the average daily Los Angeles Bunker Benchmark on October 23, 26, and 27, 2015. Trader-1 directed a Glencore employee to submit offers to Platts during the window, and to decrease the prices of those offers. The Glencore employee did so 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 Glencore's positions in the Cargo Trades that priced on those days.[6] Glencore's activity in the window on the Cargo Pricing Days of October 23, 26, and 27, 2015, resulted in substantial improper savings to Glencore.

United States Gulf Coast. In or around November 2012, Glencore had long exposure to the average daily Platts USGC HSFO Benchmark for that month in excess of 8,800,000 barrels. An increase of the month average benchmark thus would generate extra revenue to Glencore. The exposure arose from both derivatives such as swaps and futures related to the benchmark that month, and from Glencore's physical trades that were priced by reference to the benchmark during the month. To benefit that exposure, Glencore traders reported bids and raised bids to Platts approximately 728 times that month, and reported approximately 59 cargo purchases. Glencore was highly active on the buy-side of the Platts window, comprising the majority of all bids and raised bids that month. Glencore's activity in the window on that month was intended to manipulate upward the daily Platts USGC HSFO benchmark, and the numerous derivatives

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[5] 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.

[6] 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.

such as swaps and futures settled by reference to the benchmark, potentially resulting in substantial improper revenue to Glencore.[7]

United States Gulf Coast. In or around July 2018, Glencore had short exposure to the average daily Platts USGC HSFO Benchmark for that month in excess of 4,000,000 barrels. A decrease of the month average benchmark thus would generate extra revenue to Glencore. The exposure arose from both derivatives such as swaps and futures related to the benchmark that month, and from Glencore's physical trades that were priced by reference to the benchmark during the month. To benefit that exposure, Glencore traders reported offers and lowered offers to Platts approximately 530 times that month, and reported approximately 26 cargo sales. Glencore was highly active on the sell-side of the Platts window, comprising the majority of all offers and lowered offers that month. Glencore's activity in the window on that month was intended to manipulate lower the daily Platts USGC HSFO benchmark, and the numerous derivatives such as swaps and futures settled by reference to the benchmark, potentially resulting in substantial improper revenue to Glencore.[8]

New York Harbor. In or around December 2016, Glencore had long exposure to the average daily Platts New York LSFO benchmark for that month in excess of 450,000 barrels. An increase of the month average benchmark thus would generate extra revenue to Glencore. The exposure arose from derivatives such as swaps and futures related to the benchmark that month. To benefit that exposure, Glencore traders reported bids and raised bids to Platts approximately 70 times on certain days that month. Glencore was highly active on the buy-side of the Platts window on those days, comprising the majority of all bids and raised bids. Glencore's activity in the window on that month was intended to manipulate higher the daily Platts New York LSFO Benchmark, and the numerous derivatives such as swaps and futures settled in reference to the benchmark, potentially resulting in improper revenue to Glencore.[9]

New York Harbor. In or around September 2016, Glencore had long exposure to the average daily Platts New York HSFO Benchmark for that month of nearly 800,000 barrels. An increase of the month average benchmark thus would generate extra revenue to Glencore. The exposure arose from both derivatives such as swaps and futures related to the benchmark that month, and from Glencore's physical trades that were priced by reference to the benchmark during the month. To benefit that exposure, Glencore traders reported bids and raised bids to Platts approximately 107 times on certain days that month, and reported approximately 5 cargo purchases. Glencore was highly active on the buy-side of the Platts window on those days, comprising the majority of all bids and raised bids. Glencore's activity in the window on those

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[7] On October 31, 2012, Platts assessed the USGC HSFO Benchmark at $92.10 per barrel. The average daily Platts USGC HSFO Benchmark for the month of November 2012 was approximately $92.93 per barrel.

[8] On June 29, 2018, Platts assessed the USGC HSFO Benchmark at $70.28 per barrel. The average daily Platts USGC HSFO Benchmark for the month of July 2018 was approximately $67.16 per barrel.

[9] On November 30, 2016, Platts assessed the New York Harbor LSFO Benchmark at $43.81 per barrel. The average daily Platts New York Harbor HSFO Benchmark for the month of December 2016 was approximately $47.32 per barrel.

days was intended to manipulate higher the daily Platts New York HSFO Benchmark, and the numerous derivatives such as swaps and futures settled by reference to the benchmark, potentially resulting in substantial improper revenue to Glencore.[10]

* * *

By manipulating or attempting to manipulate these U.S. benchmarks, Glencore also manipulated and distorted, or was attempting to manipulate and distort, other benchmarks that were assessed directly or indirectly by reference to these benchmarks, as well as numerous futures, swaps, and other derivatives and physical trades that price by reference to the benchmarks. This would be to the detriment of market participants that had opposite exposure (including Glencore's counterparties), or who looked to rely on the benchmarks as a fair price reference for physical or derivatives trades, including U.S. futures contracts and swaps.

b. Fraud and Corrupt Practices

i. Misappropriation of Confidential Information

At various times during the Relevant Period and the Charging Period, directly and through intermediaries, Glencore improperly obtained nonpublic information from employees and agents of the SOEs, including in Mexico. This information was material to Glencore's business and trading, such as transactions with the SOE as well as derivatives trading. SOE agents who had access to confidential information—and who owed a duty to the SOE under law and applicable employment policies to keep the information confidential—disclosed nonpublic information, including information material to Glencore's transactions with the SOE or to related physical and derivatives trading, to Glencore. Glencore traders in knowing possession of the confidential information then entered into related physical transactions and derivatives transactions and otherwise used the information in their business, including U.S.-based transactions and business.

Glencore traders understood the sensitivity of improperly obtained confidential information and took steps to maintain it in confidence and ensure that the SOE would not learn they had it in their possession. For example, as one Glencore staff cautioned a Glencore trader regarding improperly obtained information: "this is confidential and [the SOE] doesn't know we have this [information] available."

Glencore traders considered the information material to certain of Glencore's trading and business decisions such as in formulating business and negotiation strategies. For example, in or around October 2013, Glencore personnel including a U.S.-based Glencore trader used information obtained from an SOE explicitly acknowledged as "confidential" to analyze the economics of a potential project relating to the SOE and determine potential positions that Glencore could take in negotiations with the SOE. This economic analysis was prepared for a meeting with the global head of the Glencore oil department, among others. At times, the

[10] On August 31, 2016, Platts assessed the New York Harbor HSFO Benchmark at $35.39 per barrel. The average daily Platts New York Harbor HSFO Benchmark for the month of September 2016 was approximately $38.08 per barrel.

confidential information was disseminated among Glencore oil traders and personnel, including Glencore traders in the United States, London, and Singapore, for use in related physical and derivatives transactions and otherwise in their business.

ii. Corrupt Payments for Preferential Treatment and Trades

At various times during the Relevant Period and the Charging Period, Glencore, by and through its traders and agents, made corrupt payments to employees and agents working at SOEs of Brazil, Cameroon, Nigeria, and Venezuela.[11] Glencore or its affiliates made the corrupt payments in exchange for improper preferential treatment and access to trades with the SOEs. Glencore's conduct was designed to increase Glencore's profits from certain physical and derivatives trading in oil markets around the world, including U.S. physical and derivatives markets. Glencore engaged in this corrupt conduct in connection with derivatives such as swaps and futures contracts subject to the rules of Commission-registered entities, as well as trades with U.S. counterparties, and at times during the Relevant Period and the Charging Period, Glencore personnel engaged in aspects of the scheme from the United States. The corrupt conduct was widespread within Glencore's oil business, and supervisors were aware of and at times directly involved in the corruption.

To conceal the corruption, the corrupt payments at times were in large amounts of cash, and in some instances, corrupt payments also were invoiced through third-party companies, with deceptive invoices to Glencore for euphemistic costs or services such as "advance payment," "marketing services," or "commission." Glencore traders and intermediaries at times used coded language such as "filings," "newspapers," or "chocolates" when referring to the corrupt payments.

Regarding trading involving Nigeria and Cameroon, from at least as early as 2007 through at least 2015, Glencore made corrupt payments to SOE agents over several years amounting to millions of dollars in exchange for preferential treatment and access to more than 100 oil cargo trades, including crude oil. Regarding trading involving Venezuela, from at least in or around 2012 to in or around 2014, Glencore via an intermediary made corrupt payments to SOE agents relating to demurrage and late fees arising from trades of oil and oil products with the relevant SOE. Regarding Brazil, during the Relevant Period, Glencore made corrupt payments via intermediaries to SOE agents in exchange for, among other things, preferential treatment and access to trades.

III. LEGAL DISCUSSION

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

Section 6(c)(1) of the Act, 7 U.S.C. § 9, and Regulation 180.1, 17 C.F.R. § 180.1 (2021), prohibit the use or attempted use of any manipulative or deceptive device, untrue or misleading statements or omissions, or deceptive practice, in connection with any swap or contract of sale of

[11] Similar conduct occurred during the Relevant Period in Equatorial Guinea and Ivory Coast.

any commodity in interstate commerce, or for future delivery. Specifically, Regulation 180.1(a)(1)–(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; (2) [m]ake, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; (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) of the Act and Regulation 180.1 prohibit fraud or manipulation. *CFTC v. Monex Credit Co.*, 931 F.3d. 966, 976-77 (9th Cir. 2019) (holding, in the context of leveraged transactions, "the CFTC may sue for fraudulently deceptive activity regardless of whether it was also manipulative.").

To establish fraud or manipulation in violation of Section 6(c)(1) of the Act and Regulation 180.1(a)(1)–(3), the Commission must establish that Respondents: (1) attempted to engage or engaged in prohibited fraudulent or manipulative conduct (i.e., employed a manipulative device, scheme, or artifice to defraud; made a material misrepresentation, misleading statement or deceptive omission; 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).

For manipulative conduct, Section 6(c)(1) of the Act and Regulation 180.1 do not require the showing of an intent to affect prices or an actual effect on prices. *E.g*., *McVean Trading*, 2017 WL 2729956, at *10*; In re Grady*, CFTC No. 18–41, 2018 WL 4697026, at *5 (Sept. 26, 2018) (consent order) (internal citations omitted). Nor does either require "a showing of reliance or harm to market participants in a government action brought under CEA section 6(c)(1) and final Rule 180.1." *McVean Trading*, 2017 WL 2729956, at *10. The Commission "will consider all relevant facts and circumstances in determining whether a violation of Section 6(c)(1) and Regulation 180.1 has occurred." *Id*. (internal quotation omitted).

Glencore violated Section 6(c)(1) of the Act and Regulation 180.1, among other ways, 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, by intentionally or recklessly: (1) submitting manipulative bids and offers and otherwise engaging in manipulative trading activity relating to Platts physical fuel oil price benchmarks associated futures and swaps, in order to benefit, among other positions, physical positions and related derivatives positions held on U.S. derivatives markets[12]; (2) using misappropriated and corruptly obtained nonpublic information material to, for example, Glencore's trading of physical oil products and related derivatives contracts[13]; and (3) obtaining improper preferential treatment and access to trades from agents of its counterparties as a result of corrupt payments to benefit its trading of physical oil products and related derivatives contracts in the global oil markets, including in the United States, and thereby defrauding its counterparties and harming other market participants.[14]

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[12] *In re Vitol Inc.*, CFTC No. 21–01, 2020 WL 7258884, at *8 (Dec. 3, 2020) (consent order) (finding Respondents employed a manipulative device by "submitting manipulative bids and offers and otherwise engaging in manipulative trading activity relating to Platts . . . benchmarks . . . to attempt to benefit" related physical and derivatives positions); *In re Total Gas & Power N. Am. , Inc.*, CFTC No. 16–03, 2015 WL 8296610, at *9 (Dec. 7, 2015) (consent order) (finding "Respondents intentionally employed a manipulative device by purchasing and/or selling large volumes of fixed-price natural gas at the relevant hubs before and during bid-week that were intended to benefit . . . related financial positions); *see McVean Trading*, 2017 WL 2729956, at *10 (internal citations omitted); *In re Goldman Sachs Group*, CFTC No. 17–03, 2016 WL 7429257, at *23 n. 11 (Dec. 21, 2016) (consent order) ("Irrespective of whether the Goldman traders had an interest in hedging, the traders engaged in attempted manipulation when they placed bids and offers or executed trades . . . with the improper intent to move the [benchmark rate] in Goldman's favor" to benefit related positions); *see also SEC v. Lek Sec. Corp*., 276 F. Supp. 3d 49, 58–60 (S.D.N.Y. 2017) (conduct injecting "false pricing signals into the market" or designed to deceive or mislead market participants as to how others have valued the traded item may constitute manipulation under the securities laws, even if otherwise legal or done in open market) (citation omitted).

[13] *CFTC v. EOX Holdings L.L.C.*, 405 F. Supp. 3d 697, 708-16 (S.D. Tex. 2019) (finding complaint charging intentional or reckless trading on basis of, and tipping of, material nonpublic information in breach of a pre-existing duty to source stated claim under Section 6(c)(1) of the Act and Regulation 180.1); *see also United States v. Blaszczak*, 947 F.3d 19, 30–37 (2d Cir. 2019) (holding misappropriation of confidential nonpublic information constituted fraud in violation of various federal fraud statutes) (citations omitted), *vacated on other grounds*, 2021 WL 78043 (Jan. 11, 2021); *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).

[14] *Vitol*, 2020 WL 7258884, at *8 (trading house's deceptive scheme to obtain preferential treatment and access to trades from counterparties through corrupt payments violated Section 6(c)(1) of the Act and Regulation 180.1); *In re Sogemin Metals Inc.*, CFTC No. 00–04, 2000 WL 136059, at *1–4 (Feb. 7, 2000) (consent order) (holding broker's kickback scheme "defrauded the . . . clients [two Chilean government-owned metals companies] within the meaning of Section 4b of the Act and Section 30.9 of the Regulations," where broker of London Metal Exchange's trades failed to disclose the kickback scheme involving brokerage commission payments channeled to, among others, the Chilean companies' employees or to their family members); *see also Riordan v. S.E.C.*, 627 F.3d 1230, 1230–34 (D.C. Cir. 2010) (affirming finding of liability, where scheme to provide bribes and kickbacks—in exchange for being directed business, seeing competitors' bids outside the normal competitive bidding process, and ability to submit bids outside the normal competitive bidding process, such as past due date—constituted scheme to defraud in violation of 15 U.S.C. §§ 10(b), 17(a), and S.E.C. Rule 10b-5) (Kavanaugh, J.), *abrogated on other grounds by Kokesh v. SEC*, 137 S. Ct. 1635 (2017); *S.E.C. v. Zwick*, 2007 WL 831812, at *16 (S.D.N.Y. 2007) (finding scheme to provide bribes, kickbacks, and items of value to a third party's employee, in exchange for that employee directing trades to payer of bribe, constituted "scheme to defraud" in violation of Exchange Act §§ 17(a) and 10(b), and S.E.C. Rule 10b-5), *aff'd*, *S.E.C. v. Zwick*, 317 Fed. Appx. 34 (2d Cir. 2008).

B. 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).

Section 6(c)(3) of the Act, 7 U.S.C. § 9(3), 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 (2021).

Glencore specifically intended to manipulate the Los Angeles Bunker Benchmark, the New York LSFO Benchmark, the New York HSFO Benchmark, and the USGC HSFO Benchmark, and associated derivatives such as futures and swaps, in order to benefit, among other things, Glencore's related physical and derivatives positions, including swaps, futures on or subject to the rules of entities registered with the Commission, and physical contracts that were priced by reference to benchmarks. In furtherance of that intent, Glencore traders and personnel submitted bids, offers, and trades to Platts during the benchmark trading windows in order to skew the relevant Platts benchmark, and consequently the value of Glencore's positions that were priced by reference to the benchmark, in Glencore's favor. Through these actions, among others, traders and others at Glencore could, and at times did in Los Angeles, cause artificial prices in the benchmarks and thus the associated derivatives and physical trades. By this conduct, Respondents violated Sections 6(c)(3) and 9(a)(2) of the Act and Regulation 180.2.

C. False, Misleading, or Inaccurate Reports Concerning Oil Products, in Violation of Sections 9(a)(2) and 6(c)(1)(A) of the Act, and Regulation 180.1(a)(4)

Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), makes it unlawful for any person "knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce."[15]

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[15] *See also United States v. Brooks*, 681 F.3d 678, 703-05 (5th Cir. 2012) (affirming conviction for false reporting of natural gas trades in violation of the Act and finding that "it is 'clear beyond a reasonable doubt that a rational jury' would have found that the Defendants-Appellants had knowledge that their reports affected or tended to affect the price of natural gas"); *United States v. Valencia*, 394 F.3d 352, 354-57 (5th Cir. 2004) (reversing and remanding to the district court and holding that the knowledge requirement of the reporting prong of Section 9(a)(2) of the Act applies to the false or misleading character of the reports, as well as to delivery and inaccuracy); *CFTC v. Johnson*, 408 F. Supp. 2d 259, 267 (S.D. Tex. 2005) (finding that the facts alleged in the CFTC's complaint adequately stated a claim against the defendants for the delivery of knowingly inaccurate market information); *In re Bunge Global Markets, Inc.*, CFTC No. 11–10, 2011 WL 1099346, at *4 (March 22, 2011) (consent order) (Respondents violated Section 9(a)(2) by delivering false and misleading electronic orders on a DCM's trading platform).

Section 6(c)(1)(A) of the Act, 7 U.S.C. § 9(1)(A), and Regulation 180.1(a)(4), 17 C.F.R. § 180.1(a)(4) (2021), similarly prohibit intentionally or recklessly making false or misleading reports of market information. Specifically, Regulation 180.1(a)(4) makes it:

> unlawful . . . 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 . . . deliver or cause to be delivered, or attempt to deliver or cause to be delivered, for transmission through the mails or interstate commerce, . . . a false or misleading or inaccurate report concerning . . . market information or conditions that affect or tend to affect the price of any commodity in interstate commerce.

During the Relevant Period, Glencore, through electronic, telephonic, and other means of communication, knowingly, and intentionally or recklessly, caused to be delivered bids, offers, and trades, as well as information concerning market activity and views of supply and demand, to Platts, the service that determined various benchmark price assessments, such as the Los Angeles Bunker Benchmark, the New York LSFO Benchmark, the New York HSFO Benchmark, and the USGC HSFO Benchmark. Such market information affected or tended to affect the prices of commodities in interstate commerce, including the prices of the assessments themselves, prices of contracts of sale of commodities that priced by reference to those assessments such as fuel oil and bunker fuel, and the futures, swaps, and other financial instruments that settled in reference to assessments. Respondents' reported bids, offers, and trades, and other information, constituted false, misleading, or knowingly inaccurate reports because they did not reflect legitimate forces of supply or demand, but rather reflected Glencore's desire to distort the relevant benchmark price assessments and associated derivatives higher or lower in order to benefit their related physical, futures, and/or swaps positions, including at times those entered into while in possession of misappropriated information and/or entered into through fraudulent means. Glencore knew that these reports contained false, misleading, or knowingly inaccurate information.

Accordingly, Respondents violated Sections 6(c)(1)(A) and 9(a)(2) of the Act, and Regulation 180.1(a)(4).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondents violated Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13(a)(2), and Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1, 180.2 (2021).

V. OFFER OF SETTLEMENT

Respondents have submitted the Offer in which Respondents, without admitting or denying the findings and conclusions herein, except to the extent that Respondents admit those findings in any related action against Respondents by, or any agreement with, the United States Department of Justice or any other governmental agency or office, or to the extent those findings are admitted in *In re Emilio Heredia Collado*, CFTC No. 21-04, 2021 WL 2182105, (Mar. 25, 2021) (consent order):

A. Acknowledge service of this Order;

B. Admit 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. Waive:

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 Respondents 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 (2021), relating to, or arising from, this proceeding;

7. Any and all claims that Respondents 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. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;

E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:

1. Makes findings by the Commission that Respondents violated Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13(a)(2), and Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1, 180.2 (2021));

2. Orders Respondents to cease and desist from violating Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13(a)(2), and Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1, 180.2 (2021);

3. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of eight hundred sixty-five million, six hundred thirty thousand, seven hundred eighty-four dollars ($865,630,784), plus any post-judgment interest, within ten (10) business days of the date of entry of this Order;

4. Orders Respondents and their 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, including but not limited to the undertaking by Respondents to pay, jointly and severally, disgorgement in the amount of three hundred twenty million, seven hundred fifteen thousand, sixty-six dollars ($320,715,066) plus any post-judgment interest, within ten (10) business days of the date of entry of this Order; and

5. Provides that the civil monetary penalty obligation and the disgorgement obligation (collectively, the "Monetary Sanction") of one billion, one hundred eighty-six million, three hundred forty-five thousand, eight hundred fifty dollars ($1,186,345,850) will be offset, up to eight hundred fifty-two million, seven hundred ninety-seven thousand, eight hundred ten dollars ($852,797,810), by the amount of any payment made pursuant to the resolutions concerning manipulation and corruption between Respondents and the United States Department of Justice dated on or around May 24, 2022 (the "Criminal Resolutions").

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

*   *   *

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondents shall cease and desist from violating Sections 6(c)(1), 6(c)(1)(A), 6(c)(3), and 9(a)(2) of the Act, 7 U.S.C. §§ 9(1), 9(1)(A), 9(3), 13(a)(2), and Regulations 180.1 and 180.2, 17 C.F.R. §§ 180.1, 180.2 (2021));

B. Respondents shall pay, jointly and severally, a civil monetary penalty in in the amount of eight hundred sixty-five million, six hundred thirty thousand, seven hundred eighty-four dollars ($865,630,784), plus post-judgment interest, 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.

The Monetary Sanction of one billion, one hundred eighty-six million, three hundred forty-five thousand, eight hundred fifty dollars ($1,186,345,850) will be offset, up to eight hundred fifty-two million, seven hundred ninety-seven thousand, eight hundred ten dollars ($852,797,810), by the amount of any payment made pursuant to the Criminal Resolutions. Respondents shall provide (to the persons and addresses listed below) proof of any payment under the Criminal Resolutions, including the case name(s) and number(s) in connection with which such payment has been made, and the amount by which the Monetary Sanction is to be reduced, within ten business days of making such payment.

Respondents shall pay the CMP Obligation, except for any portion satisfied by offset, 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, Respondents shall contact the email address 9-AMC-AR-CFTC@faa.gov to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondents and the name and docket number of this proceeding. The Respondents 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. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. Monitor

Respondents agree to retain independent compliance monitor(s) pursuant to the terms described in the Criminal Resolutions and Attachment(s) D thereto.

2. Public Statements

Respondents agree that neither Respondents nor any of Respondents' successors and assigns, agents, or employees under Respondents' authority or control shall take any action or make any public statement on behalf of Respondents or any of Respondents' 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 Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and Respondents' 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 Respondents 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.

3. Disgorgement

Respondents shall pay, jointly and severally, disgorgement in the amount of three hundred twenty million, seven hundred fifteen thousand, sixty-six dollars ($320,715,066) plus post-judgment interest, within ten (10) business days of the date of entry of this Order (the "Disgorgement Obligation"). If the Disgorgement Obligation is not paid in full or otherwise satisfied within ten business days of the date of the entry of this Order, then post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date following the 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.

Respondents shall pay the Disgorgement Obligation, except for any portion satisfied by offset, 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, Respondents shall contact the email address 9-AMC-AR-CFTC@faa.gov to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the Disgorgement Obligation with a cover letter that identifies the Respondents and the name and docket number of this proceeding. The Respondents 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.

4. Cooperation with the Commission

Respondents shall cooperate fully and expeditiously with the Commission, including the Division, in this action, and in any current or future Commission investigation or action related thereto. Respondents shall also cooperate in any investigation, civil litigation, or administrative matter related to or arising from, this action. As part of such cooperation, Respondents agree 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, subject to applicable laws and regulations;

c. Provide authentication of documents and other evidentiary material;

d. Provide copies of non-privileged documents within Respondents' possession, custody, or control, subject to applicable laws and regulations;

e. Subject to applicable laws and regulations, make Respondents' best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of any 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, make Respondents' best 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. Respondents also agree that they will not undertake any act that would limit their ability to cooperate fully with the Commission. Respondents 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 any 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.

5. Prohibited or Conflicting Undertakings

Should the Undertakings herein be prohibited by, or be contrary to, the provisions of any obligations imposed on Respondents by any presently existing, or hereinafter enacted or promulgated laws, rules, regulations, or regulatory mandates, then Respondents shall promptly transmit notice to the Commission (through the Division) of such prohibition or conflict, and shall meet and confer in good faith with the Commission (through the Division) to reach an agreement regarding possible modifications to the Undertakings herein sufficient to resolve such inconsistent obligations. In the interim, Respondents will abide by the obligations imposed by the laws, rules, regulations, and regulatory mandates. Nothing in these Undertakings shall limit, restrict, or narrow any obligations pursuant to the Act or the Regulations, including, but not limited to, Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31, 1.35 (2021), in effect now or in the future.

6. Partial Satisfaction

Respondents understand and agree that any acceptance by the Commission of any partial payment of the CMP Obligation shall not be deemed a waiver of Respondents' 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.

7. Change of Address/Phone

Until such time as Respondents satisfy in full the CMP Obligation as set forth in this Order, Respondents 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.

8. Bankruptcy Notice

Until such time as Respondents satisfy in full their Disgorgement Obligation and CMP Obligation, upon the commencement by or against Respondents of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondents' 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
Legal Division
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

* * *

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: May 24, 2022