

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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Proceedings

In the Matter of:) CFTC DOCKET NO. 10-17¹
Vitol Inc. and) ORDER INSTITUTING PROCEEDING
Vitol Capital Management Ltd.) PURSUANT TO SECTIONS 6(c) AND
Respondents.) 6(d) OF THE COMMODITY EXCHANGE
ACT, MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that on one or more occasions during 2007, Vitol Inc. (“VIC”) and Vitol Capital Management Ltd. (“VCM”) violated Section 9(a)(4) of the Commodity Exchange Act (the “Act”), as amended, 7 U.S.C. § 13(a)(4) (2006). Accordingly, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether VIC and VCM (collectively, “Respondents”) engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of this 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 herein, Respondents consent to the entry of this Order Instituting Proceeding Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.¹

¹ Respondents consent to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondents do not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer or this Order, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of the Offer or this Order, or the findings or conclusions consented to in the Offer or this Order, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

In 2007, VIC and VCM learned that the New York Mercantile Exchange (“NYMEX”) misperceived the true nature of the relationship between VIC and VCM, including the flow of trading information between them. Respondents willfully failed to correct NYMEX’s misperception. Consequently, until approximately March 2009, NYMEX was without information necessary to determine whether Respondents’ positions should have been aggregated for position limit and accountability level purposes.

B. RESPONDENTS

VIC, a U.S. company, is in the business of trading energy commodities and hedging physical positions with NYMEX energy futures and options on futures markets. VIC is a non-clearing member of NYMEX. VCM, a Bermuda company with an office in the United States, trades financially-settled energy derivatives and NYMEX futures and options on futures contracts. VCM is a non-clearing member of NYMEX. Neither Respondent is registered with the Commission in any capacity.

C. FACTS

In 2007, Respondents’ employees became aware that NYMEX was under a misperception concerning the true nature of the relationship between VIC and VCM, including the extent of barriers implemented by VIC and VCM to prevent the flow of trading information between the two companies. Rather than correcting NYMEX’s misperception, VIC and VCM implemented only limited barriers to prevent the flow of trading information between Respondents. Because Respondents willfully failed to disclose to NYMEX the true nature of the relationship between VIC and VCM and the limited nature of the barriers to trading information flow between the two companies, NYMEX’s misperception continued. As a result, NYMEX did not aggregate the positions of VIC and VCM for the purposes of accountability levels and position limits until March 2009.

Since March 2009, NYMEX has aggregated Respondents’ positions for the purpose of determining whether they were in compliance with the applicable accountability levels and position limits.

D. LEGAL DISCUSSION

Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2006), makes it unlawful for any person “willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, or futures association designated or registered under [the CEA] acting in furtherance of its official duties under [the CEA].”

By engaging in the conduct described in Section III.C. above, Respondents violated Section 9(a)(4) of the Act.

IV.

FINDINGS OF VIOLATIONS

The Commission finds that Respondents violated Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2006).

V.

OFFER OF SETTLEMENT

Respondents have submitted an Offer in which they, without admitting or denying the findings herein: acknowledge service of this Order; admit the jurisdiction of the Commission with respect to all matters set forth in this Order; waive filing and service of a Complaint and Notice of Hearing, a hearing, all post-hearing procedures, judicial review by any court, any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer, any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2010), relating to, or arising from, this proceeding, and any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to or arising from this proceeding.

Respondents stipulate that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer. Respondents consent, solely on the basis of the Offer, to the entry of this Order that: makes findings by the Commission that Respondents violated Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2006); orders Respondents to cease and desist from violating Section 9(a)(4) of the Act; orders Respondent to pay, jointly and severally, a civil monetary penalty in the amount of six (6) million dollars, plus post-judgment interest, within ten (10) business days of the date of entry of this Order; and orders Respondents to comply with the undertaking consented to in the Offer and set forth below in Part VI of this Order.

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

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondents VIC and VCM shall cease and desist from violating Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2006);
2. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of six (6) million dollars within ten (10) business days after the date of entry of this Order. Post-judgment interest shall accrue on Respondents' civil monetary penalty beginning eleven (11) business days after 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. Respondents shall pay this civil monetary penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the following address:

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

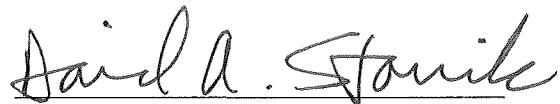
If payment by electronic funds transfer is chosen, Respondents shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the penalty with a cover letter that identifies the Respondent and the name and docket number of this proceeding. Respondents shall simultaneously transmit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address. In accordance with Section 6(e)(2) of the Act, 7. U.S.C. § 9a(2) (2006), if this amount is not paid in full within fifteen (15) days of the due date, Respondents shall be prohibited automatically from privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until Respondents have shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of the payment has been made; and

3. Respondents shall comply with the following undertaking set forth in the Offer:

Neither Respondents nor any of their agents or employees under their 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 Respondents' (i) testimonial obligations; or (ii) right to take positions in other proceedings to which the Commission is not a party. Respondents shall undertake all steps necessary to ensure that all of their agents and employees under their authority or control understand and comply with this undertaking.

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

By the Commission.



David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 14, 2010