

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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3:20 pm, Sep 30, 2020

In the Matter of:

Sunoco LP,

Respondent.

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) **CFTC Docket No.** 20-75
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**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 from at least February 2014 through January 2015 (“Relevant Period”), Sunoco LP (“Respondent” or “Sunoco”) violated Section 4c(a)(5)(C) of the Commodity Exchange Act (“Act”), 7 U.S.C. §6c(a)(5)(C) (2018). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Sunoco engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

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

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

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Respondent, by and through one of its former traders, Trader A, who left the company in 2017, engaged in multiple instances of the disruptive trading practice known as “spoofing” (i.e., bidding or offering with the intent to cancel the bid or offer before execution) involving futures contracts including Crude Oil, RBOB, and Heating Oil futures contracts traded on the New York Mercantile Exchange (“NYMEX”), a futures exchange and designated contract market which is owned and operated by CME Group Inc. (“CME”). This conduct violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018).

In accepting Respondent's Offer, the Commission recognizes Respondent's cooperation with the Division of Enforcement's (“Division”) investigation of this matter. The Commission notes that Respondent proactively implemented remedial measures and process improvements to deter and detect similar misconduct.

B. RESPONDENT

Sunoco LP, through its subsidiaries, is a wholesale motor-fuel distributor that distributes fuel to Sunoco-branded gas stations and other end users. Sunoco is a master limited partnership organized in Delaware and headquartered in Dallas. It is not registered in any capacity with the Commission.

C. FACTS

1. Spoofing

Respondent distributes motor-fuel to Sunoco-branded gas stations and other end users. In connection with this business, Respondent maintains a Refined Products trading desk that trades oil and gasoline futures. During the Relevant Period, traders on the Refined Products trading desk engaged in both hedging and discretionary trading of crude oil, heating oil, and RBOB futures contracts.

During the Relevant Period, Respondent employed Trader A on its Refined Products trading desk. Trader A's responsibilities during the Relevant Period included trading crude oil, heating oil, and RBOB futures contracts on the NYMEX.

During the Relevant Period, Trader A began placing bids and offers in Respondent's trading account for NYMEX crude oil, heating oil, and gasoline futures contracts with the intent to cancel those bids and offers before their execution. Trader A's trading pattern generally involved placing on one side of the market an iceberg order with a small visible quantity that Trader A wanted to get filled (“Genuine Order”). Trader A then placed on the opposite side of the market one or more larger orders, often for 50 or 100 lots, that Trader A intended to cancel before execution (“Spoof Order”). Generally, Trader A canceled the Spoof Order(s) shortly after placing them, and often after his Genuine Order(s) were filled.

During the Relevant Period, Trader A placed multiple Spoof Orders for NYMEX

crude oil, heating oil, and RBOB futures contracts.

2. Remediation

Respondent represents that once aware of Trader A's misconduct, Respondent promptly suspended Trader A from trading futures contracts. Respondent further represents that it conducted an internal investigation and undertook a series of proactive remedial measures and other steps to improve its compliance processes. Among other things, it improved its training program and regularly conducted separate and specific training on the prohibitions against spoofing and other disruptive trading practices under the Act and relevant exchange rules. Respondent also represents that it upgraded its trade monitoring capabilities to allow for intraday monitoring of trades.

The Commission recognizes Respondent's remediation and cooperation with the Division's investigation.

III. LEGAL DISCUSSION

A. Spoofing in Violation of Section 4c(a)(5)(C) of the Act

Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018), makes it unlawful for “[a]ny person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that . . . is, is of the character of, or is commonly known to the trade as, ‘spoofing’ (bidding or offering with the intent to cancel the bid or offer before execution).” *See, e.g., United States v. Coscia*, 866 F.3d 782, 792-93 (7th Cir. 2017) (holding that because the Act clearly defines spoofing, it provides adequate notice of prohibited conduct), *cert. denied*, 138 S. Ct. 1989 (2018).

As described above, during the Relevant Period, Respondent, by and through the acts of Trader A, placed bids and offers for futures contracts listed on NYMEX, a registered entity, with the intent to cancel those bids and offers before they were executed. By engaging in this conduct, Respondent violated Section 4c(a)(5)(C) of the Act. *See CFTC v. Oystacher*, 203 F. Supp. 3d 934, 942 (N.D. Ill. 2016) (denying motion for judgment on the pleadings, holding that allegations of placing “both bids and offers with the intent to cancel those bids or offers before execution” constitutes “trading behavior [that] falls within the Spoofing Statute’s defined prohibition”).

B. Respondent is Liable for the Acts of its Agents

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Commission Regulation (“Regulation”) 1.2, 17 C.F.R. § 1.2 (2019), provide that “[t]he act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust.” Pursuant to section 2(a)(1)(B) of the Act and Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g., Rosenthal & Co. v. CFTC*, 802 F.2d 963 966 (7th Cir. 1986); *CFTC v. Byrnes*, 58 F. Supp. 3d 319, 324 (S.D.N.Y. 2014).

Because Trader A engaged in the spoofing conduct described above within the scope of his employment with Respondent, Respondent is liable for Trader A's violation of Section 4c(a)(5)(C) of the Act.

IV. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018).

V. OFFER OF SETTLEMENT

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

- A. Acknowledges service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. Any and all claims that it 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 (2019), relating to, or arising from, this proceeding;
 - 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and 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, including this Order;
- D. 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;

- E. Requests, for the reasons set forth in Respondent’s letter dated August 18, 2020 (“Request Letter”), that the Commission advise that, under the circumstances, disqualification under Rule 262(a) of Regulation A and Rule 506(d)(1) of Regulation D of the Securities and Exchange Commission (“SEC”), 17 C.F.R. §§ 230.262(a), 230.506(d)(1) (2019), should not arise as a consequence of this Order; and
- F. Consents, solely on the basis of the Offer, to the Commission’s entry of this Order that:
1. Makes findings by the Commission that Respondent, by and through the acts of Trader A, violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018);
 2. Orders Respondent to cease and desist from violating Section 4c(a)(5)(C) of the Act;
 3. Orders Respondent to pay a civil monetary penalty in the amount of four-hundred and fifty thousand dollars (\$450,000), plus post-judgment interest within ten days of the date of entry of this Order; and
 4. 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 Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018).
- B. Respondent shall pay a civil monetary penalty in the amount of four-hundred and fifty thousand dollars (\$450,000) (“CMP Obligation”), within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten 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 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

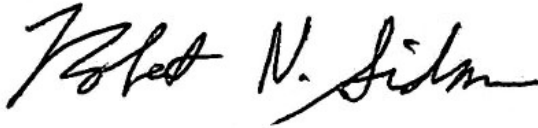
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondent and the name and docket number of this proceeding. 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 shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondent agrees that neither it nor any of its agents or employees under its 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 its agents and/or employees under its authority or control understand and comply with this agreement.
 2. **Cooperation, in General:** Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.
 3. **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 its 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.
 4. **Change of Address/Phone:** Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.
- D. Based on the nature of the violations; the findings made, and the sanctions, conditions, and undertakings imposed in this Order; and the facts and representations in the Request Letter, and per past practice providing SEC notice of Respondent's request, the

Commission advises¹ that, under the circumstances, disqualification under Rule 262(a) of Regulation A and Rule 506(d)(1) of Regulation D of the SEC, 17 C.F.R. §§ 230.262(a), 230.506(d)(1) (2019), should not arise as a consequence of this Order.

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

By the Commission.



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

Dated: September 30, 2020

¹ Rule 506(d)(1)(iii)(B) disqualifies an issuer from relying on the private offering exemptions provided for in Rule 506 if they or certain related parties are “subject to a final order of . . . [*inter alia*] the U.S. Commodity Futures Trading Commission . . . that: . . . [c]onstitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct.” Rule 506(d)(2)(iii), however, provides that disqualification “shall not apply” if the CFTC “advises in writing” that disqualification under Rule 506(d)(1) “should not arise as a consequence of such order.” *See also* 17 C.F.R. §§ 230.262(a)(3)(ii), (b)(3) (parallel provisions under Regulation A); SEC, Exemptions to Facilitate Intrastate and Regional Securities Offerings, 81 Fed. Reg. 83,494, 83,545 (Nov. 21, 2016) (stating that disqualification under Rule 504 arises “absent a waiver or other exception provided in Rule 506(d)”).