

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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Office of Proceedings
Proceedings Clerk

8:29 am, Dec 14, 2023

In the Matter of:)
)

Freepoint Commodities LLC,)

Respondent.)

CFTC Docket No. 24-02

**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 in or about June 2012 through November 2018 (“Relevant Period”), Respondent Freepoint Commodities LLC (“Respondent” or “Freepoint”) violated Section 6(c)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2022), of the Commission Regulations (“Regulations”) promulgated thereunder. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, except to the extent that Respondent admits those findings in any related action against Respondent by, or any agreement with, the United States Department of Justice (“DOJ”) or any other governmental agency or offices, 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 in any other jurisdiction.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

Freepoint is a Connecticut-based commodities merchant with significant oil and gas trading operations around the world. Freepoint trades both physical and derivative oil products. During the Relevant Period, one or more Freepoint traders located in Connecticut engaged in a fraudulent scheme to misappropriate material non-public information from a South American state-owned enterprise (“SOE A”). Using bribes and other corrupt payments, one or more Freepoint traders fraudulently obtained sensitive market information from SOE A employees who had a duty to their employer to keep the information confidential. This confidential information included SOE A’s shipping and negotiation plans, as well as bids submitted by Freepoint competitors for fuel oil cargoes. The Freepoint employee(s) traded on the basis of this material non-public information, to the detriment of its counterparties and the integrity of those markets. One or more members of Freepoint’s oil trading group knew they were trading using misappropriated material non-public information. The transactions implicated in this fraudulent scheme yielded approximately \$30 million in profits.

The Commission acknowledges Respondent’s representations concerning its remediation in connection with this matter.

B. RESPONDENT

Freepoint Commodities LLC is a Connecticut-based company that operates a global commodity merchant business. During the Relevant Period, Freepoint traded physical and derivative oil products across major trading hubs in the United States, South America, and Asia. Freepoint has never been registered with the Commission in any capacity.

C. FACTS

The global oil markets include physical commodity flows among oil producers, refiners, shipping and storage facilities, and consumers. Many oil products are traded in these markets, including crude oil, distilled and refined products, and oil byproducts blended to various specifications that are used for a variety of purposes. These varied oil products 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. 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 oil price exposures and to speculate on price trends.

Beginning in or around June 2012 and continuing through November 2018, Freepoint entered into a series of consulting agreements with an individual (the “Consultant”), who, in violation of the express terms of such consulting agreements, used a portion of the consulting fees provided by Freepoint to pay bribes to SOE A employees. In exchange for these payments, SOE A employees who had access to confidential information—and who owed a duty to SOE A

to keep the information confidential—disclosed through the Consultant material non-public information to one or more U.S.-based Freepoint traders, including information material to Freepoint’s transactions with SOE A and to related physical oil trading. The Consultant received a per-barrel fee for transactions consummated using the misappropriated information he provided.

The confidential information obtained through this scheme was sensitive market intelligence that gave Freepoint an unfair advantage over SOE A and Freepoint’s competitors. On multiple occasions, one or more Freepoint traders received confidential information, including: (1) advance notice of certain of SOE A’s oil shipments, including details concerning the quality and quantity of fuel oil being shipped; (2) details of certain of SOE A’s negotiations with Freepoint’s competitors, including competing bids for cargoes and SOE A’s negotiation strategy; and (3) general information regarding SOE A’s commercial plans. One or more Freepoint traders, in knowing possession of the nonpublic information, entered into related physical oil transactions with SOE A and otherwise used the information in their business, including in purchases of fuel oil for delivery in the United States, and Freepoint hedged some of these purchases on U.S. futures exchanges.

The Freepoint trader(s) understood the sensitivity of the fraudulently obtained information and took steps to maintain it in confidence and ensure that SOE A would not learn they had it in their possession. For example, the Consultant directed one or more Freepoint traders to submit bids for all cargoes, even when Freepoint did not actually want the cargo or had not received confidential information, to avoid alerting SOE A about Freepoint’s informational advantage. One or more of Freepoint’s U.S.-based traders with access to SOE A’s confidential information did not tell their trading counterparts at SOE A that they knew the information, and the Consultant directed Freepoint traders to never use his name when speaking with SOE A personnel. To conceal the Consultant’s payments to SOE A employees, the Freepoint trader(s) and the Consultant used code words (e.g., referring to bribes as “breakfast”), fictitious names, private email accounts, and encrypted messaging applications, and the Consultant set up a series of consulting companies to receive the money to be used for bribes and his own fees.

Freepoint trader(s) traded on the basis of this corruptly obtained material non-public information. During the Relevant Period, the transactions implicated in this fraudulent scheme yielded approximately \$30 million in profits for Freepoint.

Freepoint represents that it voluntarily undertook significant remedial steps to review and improve internal controls and policies related to the use of third-party agents and payments to third parties, including, but not limited to, strengthening its due diligence and approval processes related to the use of third parties, updating relevant policies and procedures, and enhancing its internal trading surveillance processes.

III. LEGAL DISCUSSION

Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2022), together make it:

[U]nlawful for any person, 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; [or] (3) [e]ngage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.

Section 6(c)(1) of the Act and Regulation 180.1 prohibit fraud or manipulation. *CFTC v. Monex Credit Co.*, 931 F.3d 966, 975–77 (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 Respondent: (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; (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).

Trading commodities in interstate state commerce in knowing possession of material, non-public information obtained through corrupt payments and disclosed in breach of a pre-existing duty violates Section 6(c)(1) and Regulation 180.1(a). *See, e.g., In re Glencore Int’l AG*, CFTC No. 22-16, 2022 WL 1963727, at *11 (May 24, 2022) (consent order) (trading house’s deceptive scheme to obtain preferential treatment and access to trades from counterparties through corrupt payments, and use of resulting misappropriated nonpublic information in trading physical commodities and derivative products, violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1)–(3)); *In re Vitol Inc.*, CFTC No. 21-01, 2020 WL 7258884, at *8 (Dec. 3, 2020) (consent order) (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(a)(1)–(3)).²

² *See also, e.g., In re Tippett*, CFTC No. 23-03, 2022 WL 17090923, at *6 (Nov. 16, 2022) (consent order); *CFTC v. EOX Holdings LLC*, 405 F. Supp. 3d 697, 708–16 (S.D. Tex. 2019) (holding complaint charging intentional or reckless trading on basis of, and tipping of, material non-public information in breach of a pre-existing duty to source stated claim under Section 6(c)(1) of the Act and Regulation 180.1), *appeal pending*, No. 22-20622 (5th Cir.); *In re Schultz*, CFTC No. 20-76, 2020 WL 5876731, at *4–6 (Sept. 30, 2020) (consent order) (finding that trader violated Section 6(c)(1) and Regulation 180.1 by misappropriating employer’s confidential, non-public information and disclosing it to other individuals with the intent to personally benefit from the disclosure); *see generally* Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price

Freepoint violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1)–(3), in connection with contracts of sale of a commodity in interstate commerce, by intentionally or recklessly trading physical oil products in knowing possession of misappropriated and corruptly obtained material non-public information.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Freepoint violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2022).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which Respondent, without admitting or denying the findings and conclusions herein, except to the extent that Respondent admits those findings in any related action against Respondent by, or any agreement with, the United States Department of Justice or any other governmental agency or office:

- 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;

Manipulation, 76 Fed. Reg. 41,398, 41,399 (July 14, 2011) (“Rule 180.1 Rulemaking”) (“The Commission will be guided, but not controlled, by the substantial body of judicial precedent applying the comparable language of SEC Rule 10b-5.”); *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); *Riordan v. SEC*, 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 SEC Rule 10b-5) (Kavanaugh, J.), *abrogated on other grounds by Kokesh v. SEC*, 581 U.S. 455 (2017); *SEC v. Zwick*, No. 03 Civ. 2742, 2007 WL 831812, at *16 (S.D.N.Y. Mar. 16, 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 SEC Rule 10b-5), *aff’d*, 317 Fed. Appx. 34 (2d Cir. 2008); *cf. 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).

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, 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 (2022), 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. Agrees for purposes of the waiver of any and all rights under the Equal Access to Justice Act and the Small Business Regulatory Enforcement Fairness Act of 1996 specified in subparagraphs 6 and 7 above, that the Commission is the prevailing party in this action;
- E. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; 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 violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2022);
 2. Orders Respondent to cease and desist from violating Section 6(c)(1) of the Act and Regulation 180.1(a)(1)–(3);
 3. Orders Respondent to pay a civil monetary penalty in the amount of sixty-one million dollars (\$61,000,000), plus any post-judgment interest, within 10 business days of the date of entry of this Order, subject to the offset specified in subsection VI.B; and
 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order, including but not limited to the undertaking that Respondent pay disgorgement in

the amount of thirty million, five hundred fifty-one thousand, one hundred and fifty dollars (\$30,551,150), plus any post-judgment interest, within 10 business days of the date of entry of this Order, subject to the offset specified in subsection VI.C.2.

- G. Represents that it has already taken steps to ensure compliance with Section 6(c)(1) of the Act and Regulation 180.1(a)(1)–(3), including, but not limited to, the following:
1. Engaged a third-party consultant to review and assess the company’s anti-bribery and anti-corruption compliance programs;
 2. Updated and implemented policies, procedures, and controls to address anti-bribery and anti-corruption risks, including improved know-your-customer (“KYC”) procedures and enhanced due diligence for agents of the company;
 3. Hired new employees to perform KYC and enhanced due diligence; and
 4. Implemented mandatory anti-corruption training for all persons acting on behalf of the company.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent and any of Respondent’s successors and assigns, agents, or employees under Respondent’s authority shall cease and desist from violating Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2022).
- B. Respondent shall pay a civil monetary penalty in the amount of sixty-one million dollars (\$61,000,000) (“CMP Obligation”), plus post judgment interest, within ten (10) business days of the date of the entry of this order. 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 unpaid portion of 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 CMP Obligation of sixty-one million dollars (\$61,000,000) will be offset by the amount of any payment made pursuant to the resolution concerning the fraud and/or misappropriation of confidential information between the Respondent and the United States Department of Justice dated on or around December 14, 2023 (the “Criminal Resolution”). Respondent shall provide to the persons and addresses listed below proof of any payment under the Criminal Resolution, including the case name(s) and number(s) in connection with which such payment has been made, and the amount by which the CMP Obligation is to be reduced, within ten days of making such payment.

Respondent 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
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-amz-ar-cftc@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King 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 paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondent agrees that neither it nor any of its successors and assigns, agents, or employees under its authority or control shall take any action or make any public statement on behalf of Respondent or any of its affiliates denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its 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.
 2. **Disgorgement:** Respondent agrees to pay disgorgement in the amount of thirty million, five hundred fifty-one thousand, one hundred and fifty dollars (\$30,551,150) ("Disgorgement Obligation"), representing the gains received in connection with such violation, plus any post judgment interest, within ten (10) business days of the date of this Order. 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 unpaid portion of the Disgorgement 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 Disgorgement Obligation of thirty million, five hundred fifty-one thousand, one hundred and fifty dollars (\$30,551,150) will be offset by the amount of any payment made pursuant to the Criminal Resolution, up to twenty-two million, nine hundred thirteen thousand, three hundred and sixty-two dollars (\$22,913,362). Respondent shall provide to the persons and addresses listed below proof of any payment under the Criminal Resolution, including the case name(s) and number(s) in connection with which such payment has been made, and the amount by which the Disgorgement Obligation is to be reduced, within ten days of making such payment.

Respondent 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
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-amz-ar-cftc@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the Disgorgement Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying 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.

3. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement and any other governmental agency or any self-regulatory organization, 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.
4. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's Disgorgement Obligation or 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.

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

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

Secretary of the Commission
Office of General Counsel
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.



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

Dated: December 14, 2023