

UNITED STATES OF AMERICA
Before The
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
)
ConAgra Trade Group, Inc.)
)
Respondent.)

CFTC DOCKET NO. 10-14
ORDER INSTITUTING PROCEEDING
PURSUANT TO SECTIONS 6(c) AND
6(d) OF THE COMMODITY EXCHANGE
ACT, MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS

2010 AUG 18 PM 4: 02
Received
C.F.T.C.

I.

The Commodity Futures Trading Commission (“Commission” or “CFTC”) has reason to believe that on January 2, 2008, ConAgra Trade Group, Inc. (“CTG”) violated Section 4c(a)(2)(B) of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. § 6c(a)(2)(B). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether CTG engaged in the violations as 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, CTG, through its successor in interest (referred to herein as “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 Proceeding Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

III.

The Commission finds the following:

¹ Respondent consents 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 Respondent does 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 does Respondent 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.

A. SUMMARY

On January 2, 2008, CTG was the first to trade crude oil futures at the then historic high of \$100. As a result of its effort to be the first to trade at that \$100 level, CTG caused a non-bona fide price of \$100 to be reported.

B. RESPONDENT

CTG was an active marketer of physical agricultural and energy commodities, including domestic crude oil. In connection with its market-making activities, CTG bought, sold, and stored physical crude oil and used contracts on the New York Mercantile Exchange (“NYMEX” or the “Exchange”) and the IntercontinentalExchange, Inc. (“ICE”), as well as over-the-counter derivatives, to manage its cash market price risk. On June 23, 2008, after the events at issue in this Order, CTG was bought by an investor group. The term Respondent herein refers both to CTG and its successor. Respondent is not registered in any capacity with the Commission.

C. FACTS

NYMEX prices are used as global benchmarks for a variety of energy markets and as such provide a critical price discovery function, which is vital to the public interest. Prices for transactions executed on the NYMEX are continuously reported during the trading day. Transaction prices are displayed both on the floor of the Exchange and on Globex (the NYMEX’s electronic market), and are disseminated to information vendors and news services worldwide. NYMEX prices are available to market participants in real time on various electronic reporting systems; consequently, market participants are able to see current time and sales data for transactions posted on the Exchange virtually at the instant when those prices are posted. Prices posted by the NYMEX are commonly referred to as “prints.”

On January 2, 2008, CTG sought to be and was the first trader on the NYMEX to purchase crude oil futures at \$100. At approximately 11:15 a.m. on January 2, 2008, CTG’s trader instructed its floor broker that he was going to be a “madman” if the market got within 25 cents of \$100. The trader and the floor broker’s clerk had the following conversation:

CTG Trader: When we get up near a hundred . . .

Clerk: We gotta get the print up?

CTG Trader: No, yeah.

Clerk: Alright . . .

CTG Trader: No, within freakin’ 25 cents, I’m just gonna be a madman.

Shortly after noon on January 2, 2008, a floor broker, acting on CTG’s behalf, accepted an offer for the NYMEX February (i.e., spot month) crude oil futures contract at \$100, the then all-time high. When the floor broker’s telephone clerk reported the \$100 fill to CTG, the telephone clerk anticipated that the trade would have a disruptive effect on the market, telling one of CTG’s traders that once people “realize what just happened,” there was going to be “fallout of idiots, idiocy somewhere.”

Immediately after the telephone clerk uttered those words, another NYMEX floor trader complained to NYMEX officials that he was holding an offer to sell crude oil futures at the better price of \$99.90 that had been violated. The NYMEX Floor Committee took down the \$100 print from the NYMEX price change register. At that point, CTG, in order to preserve the contract at the \$100 price, disrupted the market by instructing its floor broker to buy all of the contracts then being offered on the floor at \$99.90 to, in the words of one CTG trader, “keep the \$100 print up” and “put the high back up.” At that point, CTG then purchased ten February crude oil contracts at \$99.90. Another of CTG’s traders stated that CTG’s only reason for buying the contracts at \$99.90 was to be the first to trade at the \$100 milestone. Through its floor broker, CTG purchased one February crude oil contract at \$100.00.

Because the trade did not occur during the settlement period, the \$100 price was not included in the NYMEX’s determination of the January 2, 2008 settlement price for the February crude oil contract, which was \$99.62 on that day.

CTG’s own traders recognized that the \$100 trade potentially was disruptive to the market. When the fill was originally reported to CTG (before the print was taken down) several of CTG’s traders celebrated the trade, during which time one of the traders said “and now the sell off begins.” At about the same time, another of CTG’s traders thought the \$100 print was a mistake by the NYMEX because he did not believe that crude oil futures could be trading at \$100 on the floor when Globex was trading approximately 40 cents lower.

After getting the historic \$100 print on January 2, 2008, one of CTG’s traders bragged about the trade to other market participants. He said that CTG had instructed its floor broker that CTG had wanted to get the \$100 print for as long as three months prior to January 2, 2008, and that “we weren’t gonna let that one get away from us” and “you know hey we not gonna miss this one you know. This is the big one.” The trader also bragged in an email that “[s]ome people collect art prints, we collect price prints.”

D. LEGAL DISCUSSION

Section 4c(a)(2)(B) of the Act, 7 U.S.C. § 6c(a)(2)(B) prohibits transactions that cause a price to be reported that is not a true and bona fide price. The evidence here demonstrates that on January 2, 2008, CTG traded in a manner that caused a non-bona fide price, specifically a \$100 price for the February spot month contract, to be reported on the NYMEX.

Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9 and 13b, together authorize the Commission to serve a complaint and provide for the imposition of, among other things, fines and penalties if the Commission has reason to believe that Respondent has violated any provision of the Act, or of the rules, regulations or orders of the Commission thereunder.

The Commission acknowledges the cooperation of Respondent during the investigation of this matter.

IV.

FINDINGS OF VIOLATIONS

The Commission finds that on January 2, 2008, Respondent violated Section 4c(a)(2)(B) of the Act, 7 U.S.C. § 6c(a)(2)(B) (2006).

V.

OFFER OF SETTLEMENT

Respondent has submitted an Offer in which it, without admitting or denying the findings of fact or conclusion of law in the Order and prior to any adjudication of any issues of fact or law by the Commission herein: acknowledges receipt of service of this Order; 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 upon violations of or for enforcement of the Order; waives service and filing of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any and all objections to the CFTC Division of Enforcement staff's participation 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 it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1 *et seq.*, relating to, or arising from, this proceeding, and any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act, Pub. L. No. 104-121, 110 Stat. 847 (1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007), relating to or arising from this proceeding.

Respondent stipulates that the record basis on which this Order is entered consists solely of the findings contained in this Order to which Respondent has consented. Respondent consents, solely on the basis of the Offer, to the entry of this Order that: makes findings by the Commission that Respondent violated Section 4c(a)(2)(B) of the Act, 7 U.S.C. § 6c(a)(2)(B) (2006); orders Respondent to cease and desist from violating the provision of the Act that it has been found to have violated; orders Respondent to pay a civil monetary penalty in the amount of \$12 million within ten (10) business days of the date of entry of this Order; and orders Respondent to comply with the undertakings consented to in the Offer and set forth below in Part VI in this Order.

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

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent shall cease and desist from violating Section 4c(a)(2)(B) of the Act, 7 U.S.C. § 6c(a)(2)(B) (2006);

2. Respondent shall pay a civil monetary penalty in the amount of \$12 million within ten (10) business days after the date of entry of this Order. Respondent 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, Respondent shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the penalty 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: (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, Respondent shall be prohibited automatically from privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until Respondent has 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. Respondent shall comply with the following undertakings set forth in the Offer:

- a. Compliance and Ethics Program

Respondent shall, to the extent that it has not already done so, implement and maintain a compliance and ethics program designed to prevent and detect violations of the Act and the Commission's regulations by any director, officer, employee or agent. Respondent also agrees, to the extent that it has not already done so, to:

- (1) Appoint an independent person, with the relevant experience to Respondent's Board of Directors (the "Board");
- (2) Form a Compliance Committee of the Board that will be chaired by the newly-appointed independent Director;

- (3) Determine and implement appropriate remedial actions with respect to those traders involved in the conduct that is the subject of this Order.
- (4) Hire a third party to conduct an independent review of, and enhance, Respondent's compliance policies and procedures within 120 days after entry of this Order;
- (5) Appoint a Head of Compliance and Internal Audit who will:
 - (a) report to the Chief Financial Officer, the Compliance Committee and the Audit Committee of the Board;
 - (b) refer suspected violations of compliance policies and procedures to the Compliance Committee for an internal review or investigation;
- (6) Implement a corporate policy requiring anyone who suspects a potential violation to report it to the Head of Compliance and Internal Audit;
- (7) Establish a Help Line for employees to report suspected violations of the Act or CFTC Regulations to the Head of Compliance and Internal Audit; and
- (8) For a period of two (2) years, provide enhanced compliance training to staff on a quarterly basis. Such training shall include cautioning traders not to engage in conversations with other market participants that could be misconstrued as soliciting another market participant to engage in potentially violative conduct.

b. Public Statements

Neither Respondent 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 positions in other proceedings to which the Commission is not a party. Respondent shall undertake all steps necessary to ensure that all of its agents and employees under its authority or control understand and comply with the undertakings set forth in this Order.

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: August 16, 2010