

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

<p>In the Matter of:</p> <p>Ecoval Dairy Trade, Inc.</p> <p style="text-align: right;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CFTC DOCKET NO. <u>11-1</u></p> <p>ORDER INSTITUTING PROCEEDINGS</p> <p>PURSUANT TO SECTIONS 6(c) AND 6(d)</p> <p>OF THE COMMODITY EXCHANGE</p> <p>ACT, MAKING FINDINGS AND</p> <p>IMPOSING REMEDIAL SANCTIONS</p>
---	---	---

Received
C.F.T.C.

2011 JUL 11 1:09 PM
 RECEIVED
 C.F.T.C.

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that, from September 21, 2007 to October 17, 2007, Ecoval Dairy Trade, Inc. (“Ecoval” or “Respondent”) violated Sections 6(c), 6(d), and 9(a)(2) of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2006). 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.

II.

In anticipation of the institution of an administrative proceeding, the Respondent has submitted an Offer of Settlement (the “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 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

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, 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.

III.

The Commission finds the following:

A. SUMMARY

During the period from September 21, 2007 through October 17, 2007 (the “Relevant Period”), Ecoval attempted to manipulate the daily settlement prices of each of the Chicago Mercantile Exchange (“CME”) Non Fat Dry Milk (“NFDM”) monthly commodity futures contracts for December 2007 through July 2008. Ecoval executed various trading strategies on the electronic market trading platform, Globex, with the intent to “push” the prices of these NFDM futures contracts higher so Ecoval could potentially establish a large short position in these NFDM futures contracts at higher prices.

B. RESPONDENT

Ecoval Dairy Trade, Inc. is a Pennsylvania corporation with its principal place of business located in Wayne, Pennsylvania. During the Relevant Period, Ecoval, a company of less than twenty employees, bought and sold physical dairy commodities, domestically and internationally, and regularly traded various dairy commodity futures contracts, including NFDM. Ecoval has never been registered with the Commission in any capacity.

C. FACTS

During the Relevant Period, the NFDM futures market was illiquid and thinly traded. It carried an average total open interest across all of its twenty-four contract months of approximately 100 to 150 contracts. During the Relevant Period, market conditions reflected a disparity between near month NFDM futures prices and cash prices. The CME began electronic trading of NFDM futures contracts through Globex beginning on September 17, 2007. From this date forward, NFDM futures trading could be performed either electronically or in the trading pit, although the overwhelming majority of NFDM futures trading occurred in the electronic market. In fact, during the Relevant Period, there was minimal bid and offer activity in the pit, with only one NFDM trade occurring in the pit, and only twelve market participants active in the electronic market. This NFDM futures contract is cash-settled.

Starting on September 21, 2007, Ecoval, by and through its employees, formulated a strategy, explained in several emails, stating its intent to try to “push” NFDM futures contracts higher than existing market forces dictated so Ecoval could potentially establish large short positions in monthly NFDM futures contracts at higher prices. For example, Ecoval stated that it was, “trying to push the market a bit higher in order to get a higher sales prices [sic];” “[in] NFDM, we’re adding shorts but trying to obtain a higher price;” and “[s]till selling short NFDM but at higher prices, we’re trying to push the market higher in order to obtain a better sales price for 2008.”

Ecoval attempted to manipulate the NFDM market by utilizing various trading strategies, including, but not limited to, the following: 1) executing trades by “lifting” offers, and then immediately bidding a higher price than just paid in the trade; 2) placing both bids and offers above prevailing market prices across multiple contract months in order to establish higher price

ranges in the market; 3) consistently placing bids above the opening price or the prevailing price across multiple contracts; and 4) bidding, and then quickly cancelling the bids, without the intent to have the bids filled.

Ecoval engaged in the foregoing conduct with the intent to affect the daily settlement prices of December 2007 through July 2008 NFDN futures contracts so Ecoval could potentially establish a large short position in these same NFDN futures contracts at higher prices.

D. LEGAL DISCUSSION

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) (2006). Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9 and 13b (2006), authorize the Commission to serve a complaint and provide for the imposition of, among other things, civil monetary penalties and cease and desist orders if the Commission has reason to believe that “any person . . . has manipulated or attempted to manipulate the market price of any commodity. . . for future delivery on or subject to the rules of any registered entity . . . or otherwise is violating or has violated any of the provisions of [the] Act. . . .”

The following elements are required to prove an attempted manipulation: (1) an intent to affect the market price of a commodity; and (2) an overt act in furtherance of that intent. *See In re Hohenberg Bros. Co.*, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,271 at 21,477 (CFTC Feb. 18, 1977); *CFTC v. Bradley*, 408 F. Supp. 2d 1214, 1220 (N.D. Okla. 2005). “Intent is the essence of manipulation. . . the intent of the parties is the determinative element in a punishable manipulation. . . It is the intent of the parties which separates otherwise lawful business conduct from unlawful manipulative activity.” *In re Indiana Farm Bureau* [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,796 at 27,282-27,283 (CFTC Dec. 17, 1982). Proof of manipulative intent will most often be circumstantial in nature and thus it often can be shown inferentially from the conduct of the accused. *Indiana Farm Bureau*, ¶ 21,796 at 27,283. The type of conduct alleged can be based on a particular trading strategy. *CFTC v. Amaranth Advisors, LLC*, 554 F. Supp. 2d 523, 531 (S.D.N.Y. 2008). “Because every transaction signals that the buyer and seller have legitimate economic motives for the transaction, if either party lacks that motivation, the signal is inaccurate. Thus, a legitimate transaction combined with an improper motive is commodities manipulation.” *In re Amaranth Natural Gas Commodities Litigation*, 587 F. Supp. 2d 513, 534 (S.D.N.Y. 2008).

During the Relevant Period, Ecoval, by and through its employees, used various trading strategies in an attempt to “push” the NFDN futures market higher with the intent to affect the daily settlement prices in certain NFDN futures contracts.²

² *See In re DiPlacido*, [2007-2009 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,970 at 62,484 (CFTC Nov. 5, 2008) (“[S]ettlement prices are market prices that can be manipulated.”).

By this conduct, Ecoval, through the acts of its employees, violated Sections 6(c), 6(d), and 9(a)(2) of the Act.³

IV.

FINDINGS OF VIOLATIONS

The Commission finds that, during the Relevant Period, Ecoval violated Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2006), by attempting to manipulate the daily settlement prices for the December 2007 through July 2008 NFDN futures contracts.

V.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions 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 this Order; and waives the 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 it 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 Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2010), relating to, or arising from, this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, and any and all claims that it 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.

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 in the Offer. Respondent consents to the Commission's issuance of this Order. Pursuant to the Offer, Respondent agrees and consents, solely on the basis of the Offer, to entry of this Order that: makes findings by the Commission that Respondent violated Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2006); orders Respondent to cease and desist from

³ Ecoval is liable for the actions of its employees who acted as its employee and/or agent in trading on behalf of Ecoval. Under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2010), the 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.

violating the provisions of the Act, as amended, to be codified at 7 U.S.C. §1 et. seq., that it has been found to have violated; orders Respondent to pay a civil monetary penalty in the amount of one million four hundred and twenty-five thousand dollars (\$1,425,000), within ten (10) business days of the date of the entry of this Order; and orders Respondent to comply with the conditions and undertakings consented to in the Offer and as set forth in this Order.

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

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent Ecoval shall cease and desist from violating Sections 6(c), 6(d), and 9(a)(2) of the Act, as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008);
2. Respondent shall pay a civil monetary penalty in the amount of one million four hundred and twenty-five thousand dollars (\$1,425,000) within ten (10) days of the date of the entry of this Order. If this civil monetary penalty is not paid within ten (10) days of the date of the entry of this Order, then post-judgment interest shall accrue commencing 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. Respondent shall pay its civil monetary penalty 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, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
Attn: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (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. The Respondent shall accompany payment of the civil monetary penalty with a cover letter that identifies the Respondent and the name and docket number of this proceeding. The 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, 1151 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 the privileges of all registered entities, and, if Respondent is 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 civil monetary penalty with post-judgment interest thereon to the date of the payment has been made; and

3. Respondent and its successors and assigns shall comply with the following undertakings set forth in the Offer:

Actions or Public Statements

Respondent agrees that neither it nor any of its successors or assigns, nor its agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any finding or conclusion 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 undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this undertaking.

4. Miscellaneous Provisions

Respondent agrees that:

- a. This Order shall inure to the benefit of and be binding on successors, assigns, beneficiaries and administrators of Respondent; and
- b. If Respondent fails to comply with any of the conditions or undertakings of this Order applicable to it, it shall be subject to further proceedings pursuant to Sections 6(c) and 6(e)(2) of the Act, 7 U.S.C. §§ 9(c) and 9a(2), for violating this Order.

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

By the Commission.


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

| Dated: July 19, 2011