

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Statoil ASA,

Respondent.

CFTC Docket No. 18 – 04

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Office of Proceedings
Proceedings Clerk

9:23 am Nov 14, 2017

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND 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 Statoil ASA (“Statoil” or “Respondent”) violated Section 9(a)(2) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 13(a)(2) (2012), from at least October through November 2011. 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, 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 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 and conclusions 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, other than a statutory disqualification proceeding; proceeding in bankruptcy, or receivership; or proceeding to enforce the terms of this Order. Also, 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.

III.

The Commission finds the following:

A. SUMMARY

From as early as October 2011 through November 2011, Statoil attempted to manipulate prices in the Far East propane markets in order to benefit Statoil's financial and physical propane positions in the Far East, including Statoil's NYMEX-cleared swaps, which settled to those prices. Statoil's attempted manipulation violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012).

B. RESPONDENT

Statoil ASA is an international energy company, headquartered in Stavanger, Norway, with activities in more than thirty countries around the world, including the United States. As part of its business activities, Statoil participates in physical and financial energy markets.

C. FACTS

From as early as October 2011 through November 2011, Statoil, by and through its traders, attempted to manipulate the price of the Argus Far East Index ("Argus FEI")² knowing that a portion of Statoil's financial positions in the Far East consisted of NYMEX-cleared over-the-counter swaps that settled to the Argus FEI. Specifically, Statoil traders executed physical propane purchases in the Far East with the intent to increase the Argus FEI in order to benefit Statoil's financial and physical propane positions in the Far East, including Statoil's NYMEX-cleared swaps directly priced to the Argus FEI.

This conduct followed on the heels of major losses in Statoil's gas liquids unit throughout 2011. After incurring these losses, Statoil refocused on its winter plan in the Far East propane market in an effort to achieve profitability. In anticipation of seasonal market forces, Statoil established physical and financial positions in the Far East that would benefit from a rising Argus FEI. However, Argus FEI propane market conditions did not materialize as expected by Statoil, leading to the risk of additional substantial losses in the gas liquids unit.

In an effort to avoid these losses and meet December customer obligations, efforts were made to prop up the Argus FEI by purchasing propane cargoes during the November Argus FEI

² Argus Far East Index ("FEI") is a published index of propane prices in the Far East region. Argus is an independent media organization that regularly publishes price assessments for global propane regions. The Argus FEI is used for U.S. futures contract and swap pricing in the propane industry, and several futures contracts traded on U.S. commodity exchanges settle against the Argus FEI.

propane price-setting window.³ By purchasing all of the cargoes in the November price-setting window, which would remove propane supply from the market, Statoil was hoping to signal that demand was high and put “upwards pressure” on the November Argus FEI propane price. Statoil’s intent was described repeatedly in contemporaneous communications. As one trader put it, “[w]e are delivering 13.5 cargoes in December, giving us a strong position and good insight in to [sic] the direction of the November quote in Argus.” In another communication, a Statoil trader wrote: “If we are buying 17 cargoes there are only a few days when we will not be able to have a good impact on the Argus quote. . . . We are actually likely to move it quite a bit up as we keep buying. . . .” Although contemplated by some of the traders, Statoil did not purchase more cargoes than needed to meet its physical delivery obligations.

These propane cargo purchases in the November Argus FEI price-setting window were characterized as “bullets” in achieving price movement. Moreover, it was clear that these “bullets” were being used to benefit Statoil’s financial and physical propane positions in the Far East tied to the Argus FEI, which included its NYMEX-cleared swaps: “[Statoil’s] plan to cover December sales obligations by purchasing 14-16 cargoes in November. When these purchases are taking place during a limited time the prices [sic] is expected to rise *causing the paper position bought* [which settled to the Argus FEI] *to increase in value.*” (Emphasis added).

However, Statoil’s plan to profit by creating an artificial settlement price for Statoil’s financial and physical propane positions did not materialize as hoped. It had not foreseen that there would be such a large volume of propane available to be purchased in the November 2011 Far East market. As one Statoil trader noted:

The LPG market is long. Period. It is longer than we had anticipated with quite a few extra FOB cargoes being sold . . . Also, quite a few of the players in the market have a vested interested in holding the [Argus] FEI down and they have been willing to sell cargoes . . . at discounted prices . . . Statoil have bought 5 cargoes over the last week but this has not been enough to keep the [price] up.

Because there was such a large volume of propane available to purchase, even Statoil’s purchases of propane cargoes in the Argus FEI price-setting window did not move the market as expected.

³ In order to set the FEI, Argus collects information from market participants during the Argus daily open window assessment period (the “Argus window”), a 30-minute window, including but not limited to information concerning market participants’ bids, offers, and transactions in propane for the Far East. For the Far East, the Argus window closes at 5:00 p.m. Singapore time. Transactions outside the Argus window are not factored into the daily price assessment.

IV.

LEGAL DISCUSSION

A. Statoil Attempted to Manipulate

1. Legal Standard

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, or of any swap.” 7 U.S.C. § 13(a)(2) (2012). Attempted manipulation under the Act requires: (1) an intent to affect market price and (2) some overt act in furtherance of that intent. *See CFTC v. Parnon Energy, Inc.*, 875 F. Supp. 2d 233, 250 (S.D.N.Y. 2012); *In re Hohenberg Bros. Co.*, CFTC No. 75-4, 1977 WL 13562, at *7 (Feb. 18, 1977).

Under the first prong, intent to affect market price is satisfied where the respondent “acted (or failed to act) with the purpose or conscious object of causing or effecting a price or price trend in the market that did not reflect the legitimate forces of supply and demand.” *In re Ind. Farm Bureau Coop. Ass’n*, CFTC No. 75-14, 1982 WL 30249, at *7 (Dec. 17, 1982). “Since proof of intent will most often be circumstantial in nature, manipulative intent must normally be shown inferentially from the conduct of the accused.” *Id.*; *see also In re Hohenberg Bros.*, 1977 WL 13562, at *7. Further, “while knowledge of relevant market conditions is probative of intent, it is not necessary to prove that the accused knew to any particular degree of certainty that his actions would create an artificial price. It is enough to present evidence from which it may reasonably be inferred that the accused ‘consciously desire[d] that result, whatever the likelihood of that result happening from his conduct.’” *Ind. Farm Bureau*, 1982 WL 30249, at *7 (quoting *U.S. v. U.S. Gypsum Co.*, 438 U.S. 422, 445 (1978)). A profit motive may also be evidence of intent, although profit motive is not a necessary element of an attempted manipulation. *See In re DiPlacido*, CFTC No. 01-23, 2008 WL 4831204, at *29 (Nov. 5, 2008) (citing *In re Hohenberg Bros.*, 1977 WL 13562, at *7), *aff’d*, 364 Fed. Appx. 657 (2d Cir. 2009).

Under the second prong, an attempted manipulation is completed where there is any overt act in furtherance of manipulative intent. It is not necessary that there be an actual effect on price. *See CFTC v. Amaranth Advisors, L.L.C.*, 554 F. Supp. 2d 523, 535 (S.D.N.Y. 2008).

2. Statoil Attempted to Manipulate Through Its Physical Purchases

As evidenced by the communications among Statoil traders and by Statoil’s actual trading conduct, Statoil, by and through its traders, specifically intended to manipulate the Argus FEI in order to benefit, among other things, Statoil’s NYMEX-cleared over-the-counter swaps that were directly priced to the Argus FEI. In furtherance of that intent, Statoil, among other things, planned and executed physical propane purchases in the Far East market during the November price-setting window, in order to place upwards pressure on the November Argus FEI and, consequently, the value of its NYMEX-cleared swaps.

Statoil's purchases of propane cargoes during the November Argus FEI propane price-setting window as well as the traders' communications planning and executing its trading conduct, among other things, constituted overt acts in furtherance of Statoil's intent to manipulate, as described above. Statoil thereby engaged in acts of attempted manipulation in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012).

B. Statoil is Liable for the Acts of its Agents

Pursuant to Section 2(a)(1)(B) of the Act and Commission Regulation 1.2, principals are strictly liable for "[t]he act, omission, or failure of any official, agent, or other person acting [on their behalf] within the scope of his employment or office." 7 U.S.C. § 2(a)(1)(B) (2012); 17 C.F.R. § 1.2 (2017); *see also, 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). Accordingly, Statoil is liable for the acts, omissions, and failures of any traders, managers, or other employees who acted as their employees and/or agents in the conduct described above.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that Statoil violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012).

VI.

OFFER OF SETTLEMENT

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

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to this Order only and for any action or proceeding brought or authorized by the Commission based on a violation of or enforcement of this Order; provided, with respect to any action or proceeding brought or authorized by the Commission based on a violation of or enforcement of the cease and desist provision set forth in Section VII.A of the Order or any future violation of the Act or Regulations, Statoil does not waive any jurisdictional defenses it may have, including defenses under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-11 (2012) ("FSIA");
- 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 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ pt.148 (2017), 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, §§ 201-253, 110 Stat. 847, 857-74 (codified as amended 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;
- 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. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Statoil violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012);
 2. Orders Statoil to cease and desist from violating Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012);
 3. Orders Statoil to pay a civil monetary penalty in the amount of four million dollars (\$4,000,000), plus post-judgment interest;
 4. Orders Statoil and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Statoil shall cease and desist from violating Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012).

B. Civil Monetary Penalty.

1. Statoil shall pay a civil monetary penalty in the amount of four million dollars (\$4,000,000) ("CMP Obligation"), plus post-judgment interest. 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 (2012).
2. Statoil shall pay the CMP Obligation 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:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson 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. Statoil 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 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. 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.

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: November 14, 2017