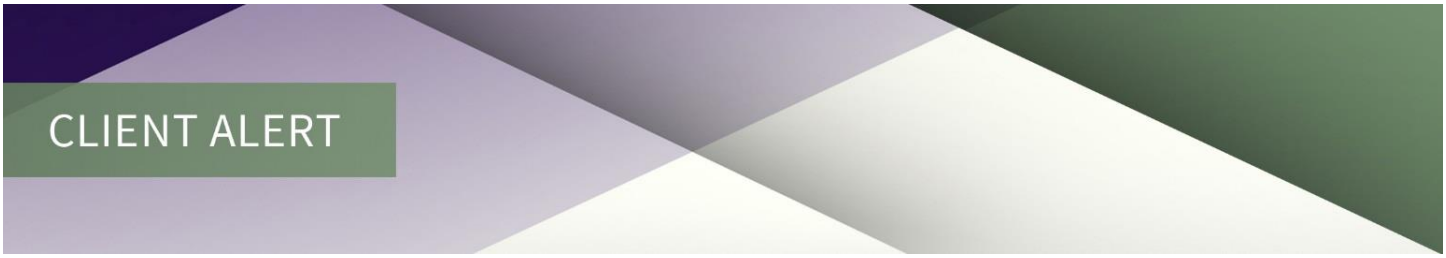

Glencore Pays Record Shattering $1.186 Billion in CFTC Settlement of Alleged Manipulation and Corruption Violations

June 1, 2022

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On May 24, 2022, the Commodity Futures Trading Commission ("**CFTC**" or "**Commission**") imposed a civil penalty and disgorgement requirement against Glencore International A.G., Glencore Ltd., and Chemoil Corporation (collectively, "**Glencore**") of $1.186 billion—the highest civil monetary penalty and highest disgorgement amount in CFTC history ("**Settlement Order**").[1] The CFTC alleged that Glencore violated the Commodity Exchange Act ("**CEA**") and the CFTC's regulations prohibiting price manipulation and fraud, which included alleged misconduct such as misappropriating confidential counterparty information and engaging in bribery schemes affecting the global oil markets. The historic civil monetary penalty amount appears to reflect the egregiousness of the alleged misconduct which spanned hundreds of instances of alleged manipulation in multiple regional U.S. markets over more than a decade.

This settlement further highlights the CFTC's continued commitment to pursue fraud and manipulation involving foreign corrupt practices, an area historically within the purview of other federal government agencies. In early 2019, the CFTC published an enforcement advisory encouraging self-reporting of violations of the CEA involving foreign corrupt practices.[2] Since the publication of the advisory, the CFTC has issued multiple settlements that involve public corruption relating to commodity and derivative transactions. The Glencore settlement also showcases the CFTC's continued focus on

[1] *In re Glencore*, Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions, CFTC Docket No. 22-16 (May 24, 2022), available here.

[2] A summary of the CFTC's foreign corrupt practices cooperation advisory is available here.

benchmark manipulation, as well as misappropriation. In 2018, the CFTC Division of Enforcement launched its insider trading task force, the efforts of which are concentrated on identifying and charging misconduct involving misappropriation of material, nonpublic information.

Alleged Misconduct Generally

Glencore, a multinational energy and commodities trading firm, is a global trader of oil and is one of the largest global diversified resource companies in the world. The CFTC alleged that from approximately 2007 through at least 2018 ("**Relevant Period**") Glencore manipulated—or attempted to manipulate—benchmark prices that were used by market participants as reference prices for physical and derivative fuel oil transactions. The benchmark prices were tied to fuel oil regional markets at high-activity market hubs along the West Coast, East Coast, and the U.S. Gulf Coast. As set forth in greater detail below, the CFTC alleged that Glencore's activities influenced, or could have influenced various fuel oil benchmark prices published by S&P Global Platts ("**Platts**"), including the Los Angeles Bunker, New York LSFO, New York HSFO and USGC benchmarks.[3] The CFTC also accused Glencore of making corrupt payments to employees and agents of certain state-owned entities ("**SOEs**"), as well as misappropriating material nonpublic information from employees and agents of certain SOEs to benefit Glencore's business and trades.[4] Finally, the CFTC alleged that supervisors at Glencore were aware of and at times directly involved in the alleged misconduct.[5]

Manipulation of Los Angeles Bunker Benchmark Prices

During the Relevant Period, Glencore had significant price exposure to the Los Angeles Bunker Benchmark related to, among other things, its physical purchases and sales of large volumes of fuel oil (referred to as "cargos") at a Los Angeles trading hub.[6] Glencore's exposure included trades based upon the Los Angeles Bunker Benchmark that it entered into with a Mexico-based SOE. Glencore's physical fuel oil sales to the SOE would benefit when the benchmark price was higher, and its purchases would benefit when the benchmark price was lower. Glencore's exposure also included transactions entered into as part of an informal joint venture ("**joint venture**") between Glencore and the Mexico-based SOE, where: (i) the SOE would purchase fuel oil from a third-party counterparty priced by reference to the Los Angeles Bunker Benchmark, (ii) Glencore would sell an oil product (referred to as "cutter stock") to the SOE for blending with the fuel oil purchased from the third-party counterparty, (iii) the SOE would sell the resulting blend into the Singapore market,

[3] The Platts Los Angeles Bunker Fuel Oil 380 CST 3.5% Ex-Wharf benchmark is referred to colloquially as the "Los Angeles Bunker Benchmark." The Platts New York Harbor No. 6.1% Fuel Oil and New York Harbor No. 6.3% Fuel Oil benchmarks are referred to colloquially as the "New York LSFO Benchmark" and the "New York HSFO Benchmark," respectively. The Platts U.S. Gulf Coast High Sulfur Fuel Oil benchmark is referred to colloquially as the "USGC HSFO Benchmark." Settlement Order at 4.

[4] *Id.* at 13. The SOEs involved include SOEs in Brazil, Cameroon, Nigeria, Venezuela, and Mexico. *Id.* at 2–3.

[5] *Id.* at 7.

[6] *Id.* at 5.

and (iv) Glencore and the SOE shared the profits flowing from the joint venture. The joint venture would be more profitable if the reported prices were lower on benchmark price assessment days. The Settlement Order explains that: "[i]f the Los Angeles Bunker Benchmark fell, the SOE would buy from its counterparty at a lower price, generating more profit to be shared by Glencore and the SOE."[7]

The Settlement Order provides the following examples of activities Glencore engaged in to influence benchmark prices and profit from either inflated or deflated benchmark prices, as applicable:

- Glencore traders submitted increasing bids or decreasing offers to Platts during the benchmark price assessment window on hundreds of occasions, and the resulting benchmark prices were then reported by Platts to its subscribers; and[8]

- Glencore personnel conveyed misleadingly incomplete, "cherrypicked," or inaccurate information to Platts outside the window, such as information regarding Glencore personnel's purported views of the market conditions or of supply and demand, knowing that such information could and did influence Platts's assessment.

The CFTC found that Glencore intended to create, and did create, artificially high or low Los Angeles Bunker Benchmarks during the benchmark pricing windows so that Glencore could sell cargos to the SOE at artificially high prices, or buy cargos from the SOE at artificially low prices (*i.e.*, prices not reflective of legitimate forces of supply and demand).[9]

Manipulation of New York and U.S. Gulf Coast Benchmark Prices

The CFTC similarly accused Glencore of artificially inflating and deflating benchmark prices in the New York and U.S. Gulf Coast markets in order to benefit its physical and derivatives trading positions that were tied to those prices.[10] Glencore's activities in the U.S. Gulf Coast and the New York Harbor fuel oil markets included trading derivatives such as futures and swaps that settled based upon average daily benchmarks. Glencore's alleged misconduct in these markets occurred on hundreds of occasions. Generally speaking, in both the New York and Gulf Coast markets, Glencore allegedly raised or lowered bids and offers depending on whether its buy-side or sell-side activities would benefit its physical or derivative positions priced by reference to those benchmarks. In the specific examples of misconduct covered by the Settlement Order, Glencore was responsible for the majority of bids or offers contributing to the benchmark prices in a given month.[11]

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7 *Id.* at 6.

8 *Id.* at 7.

9 *Id.*

10 *Id.* at 6.

11 *See id.* at 8–9.

Misappropriation of Confidential Information

At various times during the Relevant Period, Glencore employees improperly obtained and used material nonpublic information received from employees and agents of SOEs. According to the Settlement Order, this information was material to Glencore's business and trading.[12] The Settlement Order states that the SOE agents had a pre-existing duty not to share the SOE's information (*e.g.*, under applicable employment policies and law) and that Glencore was aware that the information was improperly shared with them. For example, Glencore staff cautioned a Glencore trader regarding improperly obtained information that "this is confidential and [the SOE] doesn't know we have this [information] available."[13]

Glencore allegedly used the SOE's information to inform its trading, business, and negotiation strategies. For example, Glencore employees obtained confidential information from an SOE that allowed Glencore to take an advantaged position during negotiations with that SOE concerning a project in which the SOE was engaged.[14] The Settlement Order did not provide more color regarding the details of the SOE's project. Additionally, confidential information was disseminated among Glencore oil traders and personnel, including Glencore traders in the United States, London and Singapore, for use in related physical and derivatives transactions.[15]

Corrupt Payments for Preferential Treatment and Transactions

Glencore also allegedly made corrupt payments amounting to millions of dollars to employees and agents working at SOEs in Brazil, Cameroon, Nigeria, and Venezuela in exchange for preferential treatment and access to trades with those SOEs.[16] The Settlement Order explains that "Glencore or its affiliates made the corrupt payments in exchange for improper preferential treatment and access to trades with the SOEs. Glencore's conduct was designed to increase Glencore's profits from certain physical and derivatives trading in oil markets around the world, including U.S. physical and derivatives markets."[17] The payments were in large amounts of cash or concealed on deceptive invoices for

12 *Id.* at 10.

13 *Id.*

14 *Id.*

15 *Id.* at 10–11.

16 *Id.* at 11.

17 *Id.*

fraudulent costs or services labeled as "advance payment," "marketing services," or "commission."[18] The Settlement Order notes that Glencore's oil business and supervisors were aware of and at times directly involved in the conduct.[19]

Penalties and Settlement Requirements

Based upon these activities, the CFTC found that Glencore's price manipulation violated both the CEA and the CFTC's regulations prohibiting manipulation in connection with commodity interest markets, as well as the prohibition against knowingly making false or inaccurate reports of market information.[20]

Glencore agreed to pay a civil monetary penalty and disgorgement totaling over $1 billion, the CFTC's largest settlement amount in history. Pursuant to the Settlement Order, Glencore and its subsidiaries are jointly and severally liable to pay an $865,630,784 civil monetary penalty and must disgorge $320,715,066 in profits made as a result of the alleged violations.[21] The United States Department of Justice ("**DOJ**") conducted a parallel investigation of both foreign corrupt practices and market manipulation. As part of those proceedings, Glencore entered into a plea agreement that is expected to result in (i) penalties exceeding $500 million for violating the Foreign Corrupt Practice Act and (ii) penalties exceeding $400 million for conspiracy to commit market manipulation.[22] A federal court is expected to approve this deal later this year.[23] The amounts Glencore pays in connection with the CFTC and DOJ settlements may partially offset each other.

Pursuant to the Settlement Order, Glencore is required to retain an independent compliance monitor for a three-year term, which will be extended an additional year if Glencore fails to perform its obligations under the CFTC and DOJ settlement

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18 *Id.*

19 *Id.*

20 Specifically, the CFTC alleged that Glencore's conduct violated various provisions of the CEA and the CFTC regulations promulgated thereunder. The CFTC alleged that Glencore violated CEA and CFTC prohibitions of the use or attempted use of any manipulative or deceptive device, untrue or misleading statements or omissions, or deceptive practices. *See* CEA Section 6(c)(1), 7 U.S.C. § 9(1), and CFTC Regulation 180.1, 17 C.F.R. § 180.1 (2021). Additionally, the CFTC alleged that Glencore violated CEA and CFTC prohibitions of price manipulation and attempted price manipulation. *See* CEA Sections 6(c)(3) and 9(a)(2), 7 U.S.C. §§ 9(3) and 13(a)(2), and CFTC Regulation 180.2, 17 C.F.R. § 180.2 (2021). Finally, the CFTC alleged that Glencore violated CEA and CFTC prohibitions of intentionally or recklessly making false or misleading reports of market information. *See* CEA Sections 6(c)(1)(A) and 9(a)(2), 7 U.S.C. §§ 9(1)(A) and 13(a)(2), and CFTC Regulation 180.1(a)(4), 17 C.F.R. § 180.1(a)(4) (2021).

21 Settlement Order at 17.

22 *Glencore Entered Guilty Pleas to Foreign Bribery and Market Manipulation Schemes*, DEPARTMENT OF JUSTICE OFFICE OF PUBLIC AFFAIRS (May 24, 2022), here.

23 *Id.*

agreements. Glencore also must cooperate with any related current or future Commission investigation, or any matter arising out of the conduct identified in the settlement.[24]

Investigations in Other Jurisdictions

Investigations and disciplinary actions against Glencore continue in several other countries. For example, the U.K.'s Serious Fraud Office ("**SFO**") and the Brazilian Ministério Público Federal ("**MPF**") filed parallel charges.[25] In addition to fines, Glencore pled guilty to the SFO's charges and will be sentenced on Tuesday June 21, 2022.[26] Glencore also agreed to pay a $39,598,367 fine to Brazil's MPF.[27] Meanwhile, investigations of Glencore's misconduct are ongoing in Switzerland and the Netherlands.[28]

[24] Settlement Order at 19–21.

[25] *Glencore Reaches Coordinated Resolutions with US, UK and Brazilian Authorities*, GLENCORE NEWS (May 24, 2022), here.

[26] *Id.*

[27] *Id.*

[28] *Id.*

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