The Commodity Futures Trading Commission, under a reconstituted Commission, is signaling a new era of aggressive enforcement of the Commodity Exchange Act.

Significant Violations and Penalties

**United States**[1]

On May 24, the Commodity Futures Trading Commission (CFTC) slapped Glencore[2] with the highest civil monetary fee and highest disgorgement amount in
the regulator’s history, amounting to a total of $1.2 billion in penalties.

The company was held accountable for what authorities said amounted to “manipulative and deceptive conduct” under the Commodity Exchange Act for over a decade. This misconduct involved both physical settlements and derivatives trades on the New York Mercantile Exchange (NYMEX) and other futures exchanges.

As part of its settlement with the CFTC, Glencore also agreed to hire an independent compliance monitor for at least three years with respect to all related investigations and litigation. Importantly, Glencore had never been registered with the CFTC to trade in derivatives even though it traded in trillions of dollars of financial derivatives contracts such as interest rate swaps, cross-currency swaps, and oil and oil products swaps.

In addition to the significant penalties imposed by the CFTC, Glencore pled guilty to foreign bribery and market manipulation conspiracy charges brought by the Criminal Division’s Fraud Section of the US Department of Justice (DOJ).

**United Kingdom**[3]

The US is not the only country to take action against Glencore as the UK’s Serious Fraud Office (SFO) convicted the company on seven counts of bribery, with SFO’s investigation exposing Glencore for paying over $28 million in bribes for preferential access to oil. The Director of the SFO stated that this prosecution was made possible through the strength of the SFO’s partnership with the US and other international authorities.

**Global Oil Market Maker**

Glencore is one of the world’s largest commodity trading firms. It is a significant player in the United States, United Kingdom, Asia, Africa, and South America oil markets – the primary subject of its infractions. In addition to its work in the oil industry, Glencore is a leader in mining providing metals for, among other purposes, the production of electric vehicle batteries.[4]

**The Culpable Conduct**

**Fraud**

According to the CFTC, Glencore “defrauded its counterparties, harmed other market participants, and undermined the integrity of the US and global physical and derivatives oil markets.” Its fraud between 2007 and at least 2018 consisted of it manipulating the US price-assessment benchmarks of physical fuel oil products, and related futures and swaps. The CFTC showed that Glencore spent “hundreds of days” making moves to manipulate benchmarks and manufacture artificial prices to its benefit.

**Bribery/Kickbacks**

In addition, Glencore sought to leverage bribes and kickbacks with a multitude of
countries to garner favorable treatment and disproportionate competitive advantages in the market. This included bribes for oil contracts, bribes to circumvent government audits, and bribes to judges to avoid litigation, all with the approval of its senior executives. The SFO brought similar charges of bribery when Glencore paid for better access to oil in several countries.

**Misconduct Profits**

These actions appeared to be a concerted effort to increase Glencore's profits and position globally. According to the CFTC, Glencore's trading profits increased by $320 million due to its misconduct – resulting in the highest disgorgement amount in CFTC history.

**Worldwide Impact**

In a statement by the head of the US Attorney's Office for the Southern District of New York, Damian Williams, when announcing Glencore's guilty pleas, described the pervasiveness and severity of Glencore's crimes as “staggering.”

In addition to the general impact on US and UK oil markets, the illegal conduct impacted the acquisition of oil by state-owned enterprises in the following countries:

- Brazil
- Cameroon
- Equatorial Guinea
- Ivory Coast
- Mexico
- Nigeria
- South Sudan
- Venezuela

As stated by US Attorney General Merrick Garland in the Glencore matter, “the rule of law requires that there not be one rule for the powerful and another for the powerless.”

**Importance of Benchmarks**

Oil benchmarks, like other benchmarks, are used as reference prices throughout the industry for both physical settlements and futures/options pricing. The oil industry (and ultimate consumers) rely on objectively determined oil benchmarks to ensure fair pricing and market integrity.

**Likely New Stance Against Market Manipulation**
In connection with the recent CFTC Glencore announcement, Chairman Behnam and three other Commissioners issued strong statements condemning the company’s actions and setting the tone of the newly reconstituted CFTC.[5]

In announcing CFTC’s charges, Chairman Behnam characterized Glencore’s corrupt activity as “deliberate, long-standing, and egregious” at every level of the organization. [6] He went on to mention that the nature of its conduct interferes with a functioning market and, consequently, raises costs for consumers.

Commissioner Johnson emphasized that the markets depend on the accuracy of the very benchmarks that Glencore worked to falsify, noting that its misdeeds have consequences not just for the price of oil but also for the price of food on Americans’ tables. [7] Chairman Behnam was clear: “where wrongdoers seek illicit gains ... the CFTC will be thorough, aggressive, and unrelenting.” [8] Commissioner Goldsmith Romero echoed that very sentiment, saying that the historic charge illustrates exactly what the CFTC is capable of and the lengths it is willing to go through with the help of its partners at the DOJ. [9]

As Commissioner Pham succinctly stated, “bad actors in our markets are on notice.” [10]

**Conclusion**

Such fraudulent behavior likely exacerbates the recent turmoil in the oil and food markets precipitated by the Ukrainian invasion and inflationary concerns.

One can only hope that this type of behavior is limited solely to Glencore, the oil industry, and related derivatives...

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3 The information contained in this Client Alert with respect to UK actions is based upon “Serious Fraud Office charges Glencore with seven counts of bribery” released by the SFO on May 24, 2022.

[4] See “Li-Cycle and Glencore Enter into Long-Term Commercial Agreements and Close Glencore $200 Million Investment in Li-Cycle,” released by Li-Cycle on June 1,
In March/April 2022, four (4) new Commissioners were approved by the Senate and sworn into the CFTC.


See “Statement of Commissioner Kristin Johnson Regarding the CFTC’s Order Imposing $1.186 billion in Penalties and Required Disgorgement Against Glencore for Manipulation of Oil Benchmarks,” issued on May 24, 2022.

See Behnam Glencore Announcement.


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