

13 CIV 4553
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WHITE OAK FUND LP, on behalf of itself)
and all others similarly situated,)

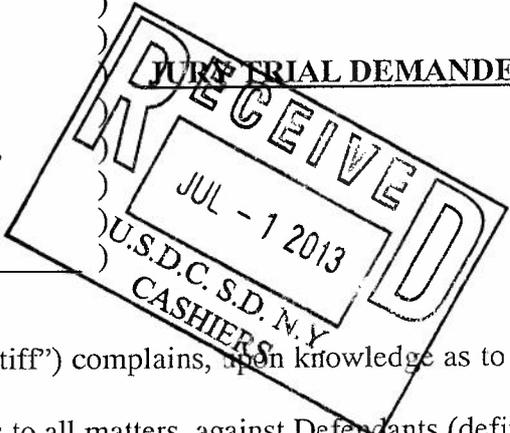
Plaintiff,)

CLASS ACTION COMPLAINT

v.)

BP PLC, ROYAL DUTCH SHELL PLC,)
STATOIL ASA and JOHN DOE NOS. 1-50,)

Defendants.)



Plaintiff White Oak Fund LP (“Plaintiff”) complains, upon knowledge as to itself and its own acts, and upon information and belief as to all matters, against Defendants (defined at ¶¶ 17-20), as follows:

1. This action arises from Defendants’ unlawful combination, agreement, and conspiracy to fix and restrain trade in, and intentional manipulation of, North Sea Brent Crude Oil (“Brent Crude oil”) and the prices of Brent Crude oil futures contracts traded on the New York Mercantile Exchange (“NYMEX”) and the Intercontinental Exchange (“ICE”) during the period of at least 2002 through the present (the “Class Period”), in violation of the Commodity Exchange Act (“CEA”), as amended 7 U.S.C. § 1, *et seq.* (the “CEA”), the Sherman Act, 15 U.S.C. § 1, and common law.

2. Defendants deliberately reported inaccurate, misleading, and false information regarding Brent Crude oil prices to Platts. Platts is a unit of McGraw Hill Financial Inc. and the leading global provider of spot and contract pricing for the physical and financially settled derivatives Brent Crude oil markets. Platts’ Brent Crude oil prices are used to price and settle physical floating Brent Crude oil deals under long-term contracts on a physical (“spot”) basis,

and to settle Brent Crude oil derivatives contracts, including NYMEX and ICE Brent Crude oil futures contracts. False reporting of Brent Crude oil prices to Platts undermines the entire pricing structure for the Brent Crude oil market.

3. Defendants are major producers and market participants in the Brent Crude oil market. As contributors of Brent Crude oil prices to Platts, Defendants had and continue to have market power and the ability to influence prices in the Brent Crude oil market. By purposefully reporting inaccurate, misleading, and false Brent Crude oil trade information to Platts, Defendants manipulated and restrained trade in both the spot Brent Crude oil market and the Brent Crude oil futures market.

4. On May 14, 2013 the European Commission (“EC”) confirmed that it, along with the EFTA Surveillance Authority, had carried out unannounced inspections of several companies acting in and providing services to the crude oil, refined oil products, and biofuels sectors. The EC undertook the inspections on concerns that (i) the companies may have colluded in reporting distorted prices to a Price Reporting Agency (“PRA”) to manipulate the published prices for a number of oil and biofuel products; and (ii) the companies may have prevented others from participating in the price assessment process, to distort published prices. As described by the EC,

The prices assessed and published by the Price Reporting Agencies serve as benchmarks for trade in the physical and financial derivative markets for a number of commodity products in Europe and globally. Even small distortions of assessed prices may have a huge impact on the prices of crude oil, refined oil products and biofuels purchases and sales, potentially harming financial consumers.

5. Defendants BP plc, Royal Dutch Shell plc, and Statoil ASA have each confirmed they are the subject of the EC investigation. In particular, Defendant Statoil confirmed that at the request of the EC, its office in Stavanger, Norway was subject to an inspection by the EFTA

Surveillance Authority, assisted by the Norwegian Competition Authority. Further, Statoil confirmed that the scope of the EC's investigation extends back to 2002. On May 17, 2013, United State Senate called for the U.S. Department of Justice to join the EC investigation.

6. Also on May 17, 2013, the U.K. Serious Fraud Office announced that it was "urgently reviewing" the EC's allegations of price-fixing in the oil markets and determining whether to accept the case for "criminal investigation."

7. Then, on June 24, 2013, it was reported that the Federal Trade Commission ("FTC") opened a formal investigation into how prices of crude oil and petroleum derived products are set. The FTC investigation is said to have mirrored the EC inquiry into the pricing practices of energy markets.

8. The foregoing investigations are expected to yield information from Defendants' internal records (e.g., instant messages, e-mails, telephone records, Brent Crude oil trading data, etc.) that provide further support for Plaintiff's claims. Plaintiff believes further evidentiary support for the allegations will be unearthed after a reasonable opportunity for discovery.

JURISDICTION AND VENUE

9. This action arises under Section 22 of the Commodity Exchange Act ("CEA"), 7 U.S.C. § 25, Section 1 of the Sherman Antitrust Act, 15 U.S.C. §§ 1, and common law, respectively.

10. Brent Crude oil is a "commodity" and is the "commodity underlying" the Brent Crude oil futures contracts traded on the NYMEX and ICE, as those terms are defined and used in Section 1a(4) and 22 of the CEA, 7 U.S.C. §§ 1a(4) and 25(a)(1)(D), respectively.

11. This Court has jurisdiction over this action pursuant to Section 22 of the CEA, 7 U.S.C. § 25, Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1, Sections 4 and 16 of the

Clayton Act, 15 U.S.C. §§ 15 and 26(a), and 28 U.S.C. §§ 1331 and 1337, respectively. This Court also has jurisdiction over the common law claim under 28 U.S.C. § 1367 because that claim is so related to the federal claim that it forms part of the same case or controversy, and under 28 U.S.C. § 1332 because the amount in controversy for the Class exceeds \$5,000,000 and there are members of the Class who are citizens of a different state than Defendants.

12. Venue is proper in the Southern District of New York, pursuant to, among other statutes Section 22 of the CEA, 7 U.S.C. §25(c), Sections 4, 12, and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22, and 26, and 28 U.S.C. §1391(b), (c), and (d). One more of the Defendants resided, transacted business, were found, or had agents in the District, and a part of the events or omissions giving rise to the claims occurred in the Southern District of New York.

13. The New York Mercantile Exchange is located in this District in New York, New York. Further, Platts' global headquarters are located in New York, New York. Platts is a unit of McGraw Hill Financial Inc., which is also headquartered in New York, New York. The Brent Crude oil prices published and compiled by Platts are widely disseminated in the U.S. to Brent Crude oil spot and futures traders, including Plaintiff, located in the U.S.

14. Brent Crude oil and Brent Crude oil futures contracts are each a commodity that trades in U.S. interstate commerce. Defendants' restraint of trade and manipulation of Brent Crude oil and Brent Crude oil futures contract prices had direct, substantial, and reasonably foreseeable effects in the U.S., and on Plaintiff and members of the Class. Brent Crude oil futures contracts are traded on the NYMEX and domestically on electronic boards of trade and on exchanges, such as ICE, accessible within the U.S. Defendants, as sophisticated Brent Crude oil market participants, knew, or had good reason to know, that Brent Crude oil prices published and compiled by Platts, respectively, are disseminated in the U.S., and are used to price, settle,

and benchmark Brent Crude oil futures contracts and/or other Brent Crude oil derivative contracts traded in the U.S. For these reasons, Defendants knew, or had good reason to know that misreporting the price of Brent Crude oil to Platts, respectively, as well as other manipulative and collusive conduct in the Brent Crude oil market, would, and did, have direct, substantial and reasonably foreseeable effects in the United States, including, without limitation, on the prices of Brent Crude oil futures contracts transacted domestically.

15. Defendants, directly and indirectly, singly and in concert, made use of the means and instrumentalities of transportation or communication in, or the instrumentalities of, interstate and/or international commerce, or of the mails in connection with the unlawful acts and practices and courses of business alleged in this Complaint.

PARTIES

16. Plaintiff White Oak Fund LP is a private placement fund headquartered in Burr Ridge, IL. Plaintiff is a member of the Chicago Board of Trade, Chicago Mercantile Exchange, NYMEX, and ICE. Plaintiff traded multiple occasions on the NYMEX and ICE, Brent Futures contracts during the class period at artificially manipulated prices. Plaintiff was deprived of transacting in a lawful non-manipulated competitive market in Brent oil futures contracts and was injured in its business or property as a direct and proximate result of Defendants' unlawful conduct.

17. Defendant BP Plc is a multinational oil and gas company headquartered in London, England, United Kingdom.

18. Defendant Royal Dutch Shell Plc is a multinational oil and gas company headquartered in The Hague, Netherlands.

19. Defendant Statoil ASA is a Norwegian oil and gas company. Statoil maintains offices in the United States, including in Stamford, Connecticut, Washington, D.C., and Houston, Texas.

20. John Doe Defendants Nos. 1-50 are other entities or persons, including oil, gas or other energy companies as well as other co-conspirators whose identities are currently unknown to Plaintiff. The John Doe Defendants participated in, furthered, and/or combined, conspired, or agreed with others to perform the unlawful acts alleged herein, including the restraint of trade, fixing, and manipulation of the physical price of Brent Crude oil and the prices of Brent Crude oil futures contracts.

AGENTS AND UNNAMED CO-CONSPIRATORS

21. Various other entities and individuals, including, but not limited to, subsidiaries and/or affiliates of the Defendants participated as co-conspirators and manipulators in the acts complained of and performed acts and made statements that aided and abetted and furthered the unlawful conduct as alleged herein. The unnamed co-conspirators, along with the above-named Defendants, performed, participated in, furthered, and/or combined, conspired, or agreed with others to perform the unlawful acts alleged herein, including the restraint of trade, fixing, and manipulation of the prices of Brent Crude oil and Brent Crude oil futures contracts.

SUBSTATIVE ALLEGATIONS

I. Background

A. Brent Crude Oil: The Physical Trading Market

1. Dated Brent

22. Platts Dated Brent is a benchmark assessment of the price of physical, light North Sea crude oil. The term “Dated Brent” refers to the physical cargoes of crude oil in the North Sea that have been assigned specific delivery dates. Each dated cargo of crude oil is often traded more than once as it makes its way to delivery to refineries – where crude is transformed into products like gasoline, diesel, jet fuel, and more.

23. Dated Brent represents the price for dated crude steams in the North Sea – Brent Ninian Blend (from which Dated Brent takes its name), Forties Blen, Oseberg and Ekofisk. Taken together, these four crudes represent a robust supply of approximately 1 million oil barrels per day of production. The most competitive grade of crude defines the final printed price of our Dated Brent assessment each day.

24. The Dated Brent price assessment reflects the tradable, repeatable spot market value of the most competitive grade at 16:30:00 London time precisely.

25. Platts publishes bids, offers, expressions of interest to trade, and confirmed trades during the Market on Close assessment process every day. This information is summarized in Platts’s daily newsletters and is published in full on its real-time information service, Platts Global Alert.

26. The underlying Brent physical market consists of (1) Dated (or wet) Brent; and (2) Cash (or forward) Brent.

27. Dated Brent refers to the spot price for Brent crude oil. Dated Brent is a market term for a cargo of North Sea Brent crude oil that has been a definitive date when it will be physically loaded onto a tanker. These cargoes are also commonly referred to as dated cargoes, wet cargoes or wet barrels.

28. Dated Brent prices – as published by Platts – is the leading global benchmark for Brent crude oil.

2. Evolution of Dated Brent

29. Platts began assessing Dated Brent in the 1980s, reflecting the value of crude to be delivered between seven and 15 days after the date the price assessment was published. As production volumes of the Brent field decreased, Platts included other crude oils into its Dated Brent assessment. Trading has trended further forward in time, and over the years Platts has moved its assessment periods to keep pace with this trend.

30. In 2002, Platts added two more crude grades to their physical Brent assessment process – Forties and Oseberg. In the same year, Platts widened the date range reflected in their assessments to 10-21 days forward, in order to better reflect the more forward-looking trading patterns of the North Sea crude market and increase potentially deliverable volumes.

31. In 2007, Platts added Ekofisk crude into their physical Brent assessment process, completing what is now known as BFOE.

32. In 2012, Platts again widened the assessed delivery period window, this time to 10-25 days forward, increasing the volume deliverable into the assessment window by more than 30%.

3. Market-On-Close Pricing

33. In establishing its daily assessment for 25-day case BFOE, Platts utilizes a system commonly known as Market on Close (MOC).

34. All grades are assessed on a MOC basis, with assessment values aligned to 16:30:00 London time precisely. In order to ensure proper dissemination of market information and performance, new bids/offers published by Platts must be received by Platts no later than the published cut-off periods. For physical North Sea bids and offers, the cut-off is currently 16:10:00; for CFD bids and offers (outright and rolls) the cut-off is currently 16:15:00; for outright cash BFOE bids and offers, the cut-off is currently 16:25:00 London time, for cash BFOE spread bids and offers, the cut-off is currently 16:28:00. For physical North Sea bids and offers, prices may be changed incrementally until 16:25:00 London time, for the CFD bids and offers (outright and rolls) prices may be changed incrementally until 16:25:00, outright and spreads on cash BFOE bids and offers may be changed incrementally up until 16:30:00 close. The time is 15:30:00 London time.

35. Platts makes three forward assessments for 25-day cash BFOE, which represent Platts forward Brent assessments. 25-day cash BFOE is also commonly known as cash BFOE or paper BFOE and the assessment reflects the value of a cargo with physical delivery within the month specified in the contract. The name 25-day name stems from the practice of notifying buyers of the loading dates for their cargoes 25 days in advance of the delivery. The assessed level reflects the tradable value for full and partial cargoes on the 25-day BFOE market.

36. The front month 25-day BFOE contract expires on the fifth of a 30-day calendar month, but the Platts assessment continues until the last business day of the preceding calendar month for legacy reasons. For example, July 25-day BFOE will expire on June 5 but Platts will

assess until June 30. On July 1, August BFOE becomes the first month, September BFOE becomes the second month, and October BFOE is added as the third month. The process will repeat itself on July 31.

37. By contrast, cargoes that have not been assigned a date for loading are known as paper barrels or “cash brent” and are traded for speculative or hedging purposes. Cargoes from a “cash” contract month are progressively “dated” or “wetted” until the 25th day before the end of that delivery month, at which point all cargoes for that delivery month must become “Dated.” Cash cargoes can become dated cargoes prior to the 25th day before the end of the delivery month if they have been assigned a date to be loaded onto a tanker. The cash BFOE cargoes trade between potential users of the physical oil until it becomes a “Dated” cargo.

38. Platts publishes in effect synthetic 25-day BFOE assessments for the front month between the fifth and the end of the preceding month. Platts assesses the front month 25-day BFOE at a constant spread to the second month 25-day BFOE from around the fifth of each calendar month to the end of the month.

39. Dated Brent is a rolling assessment that reflects the price of physical, wet Brent-Forties-Oseberg-Ekofisk cargoes loading no less than ten days forward. Specifically, dated Brent cargoes loading 10-25 days forward will be taken into account Monday through Thursday. On Friday, dated Brent cargoes loading 10-27 days forward will be taken into account. Deals done, as well as bids and offers, may be taken into account for assessment purposes. Changes in spread trade may also be considered. The cargoes are loaded FOB terminal and may include stored material at each location.

40. Platts assessments consider bids, offers, and transactions that are transparent and executable by any creditworthy counterparty. Bids, offers, or transactions that are not

transparent will not be considered in the assessment process. Naturally, bids above transparent offers or offers below transparent bids are not considered in the assessment process. Platts considers changes to bids or offers when those changes are done transparently and in normal increments. The level of each bid or offer must stand firm in the marketplace long enough for any counterparty to hit the bid or lift the offer, otherwise the bid or offer may be deemed inexecutable. Platts does not consider bids, offers, or transactions that are the result of market gapping, i.e. changes that are in excess of normal market practice.

41. Platts will assess the market as per London and would use in its assessments any information deemed reliable and provided on a transparent basis. In the absence of trade, Platts can use several other indicators, including bids and offers or spread relationships versus other crudes such as WTI.

42. Platts will use in its assessments any transaction concluded between parties that have expressed their intention to buy or sell on a transparent basis. Typically, the later a player signals their intention to buy or sell, the greater is the possibility that any eventual transaction they engage in is not open or transparent. Platts' confidence in trades evolving from buy-sell intentions signaled before the start of the assessment window will be much greater than its confidence in trades concluded abruptly from late arriving bids and offers, and late signals will therefore be evaluated on a case-by-case basis.

43. The philosophy behind MOC is that market values can change dramatically in a span of 15 minutes. Platts came to the conclusion that an averaging system for price determination could result in assessments that lag actual market levels, as deals done early in an assessment period, at a level that is not repeatable, could mathematically drag prices down or up.

44. With an MOC procedure, Platts can reflect market conditions up to the minute. A methodology that works in a period of low or high volatility, and in periods of high low contango or backwardation, is a good methodology. A market on close methodology helps achieve those goals.

45. If a deal is done on a non-transparent basis or in circumstances where questions may arise as to why a buyer/seller did not deal in an open environment, where counterparties had enough time to react, or where questions may have arisen as to the time of execution, Platts believes it must take precautions generally to not take such a deal into account. But Platts does recognize that there may be market circumstances in which a player that did not originally intend to trade during the Platts window finds that rapidly changing market conditions make it advisable, or even necessary, to enter the market after the start of the window.

46. Platts editors always seek direct verification from the principals to a bid/offer/deal, and will not disintermediate the actual market-maker, whether a deal is done or off-line.

47. If only one player is active in the market, Platts would only use information from that player if the intention to bid or offer was made on a transparent basis and within the timing guidelines. Under these circumstances, such a player's bids or offers would clearly be available for execution by any other potential trading counter party.

B. Brent Crude Oil: The Futures Market

48. A commodity futures contract is a standardized bilateral executor agreement for the purchase and sale of a particular commodity. In the context of futures trading, a commodity is the underlying instrument upon which a futures contract is based.

49. The bilateral aspect of the futures contract is that there is a seller and a buyer.

50. The sellers are one-half of the bilateral futures contract and one-half of the commodity futures market. They are referred to as “shorts.”

51. The buyers are the other one-half of the bilateral futures contract and are referred to as “longs.”

a. **NYMEX**

52. The NYMEX is a designated contract market under Section 5(b) of the CEA, 7 U.S.C. § 7(b). NYMEX is the world’s largest physical commodity futures exchange and the preeminent forum for energy and precious metals.

53. The NYMEX has a variety of futures contracts priced, settled, or benchmarked to Brent crude oil. These include: (i) the Brent Crude Oil Last-Day Futures (BZ); (ii) Brent Financial Futures (CY); and (iii) Brent Crude Oil Futures (BB). These contracts trade in increments of 1,000 barrels.

54. These contracts are transacted electronically on the Chicago Mercantile Exchange (“CME”) Globex and CME ClearPort trading platforms. Additionally, the Brent Crude Oil Last Day Futures and the Brent Financial Futures trade in the trading pits of the NYMEX in New York. Globex is an electronic trading platform owned by the NYMEX’s parent company, the CME Group.

55. Trading in the NYMEX Brent Crude Oil Last-Day Futures (BZ) terminates on the same termination day as the ICE Brent Crude Oil Futures Contract for the delivery month, this day is the business day immediately preceding the 15th day prior to the first day of the delivery month, if such 15th day is a banking day in London. If the 15th Day is a nonbanking day in London (including Saturday), trading shall cease on the business day immediately preceding the first business day prior to the 15th day.

56. Trading in the NYMEX Brent Financial Futures (CY) terminates on the last business day of the contract month.

57. Trading in the NYMEX Brent Crude Oil Futures (BB) terminated on one business day prior to the termination of the ICE Brent futures contracts, *i.e.*, two business days before the fifteenth calendar day prior to the first day of the delivery month, if the fifteenth calendar day is not a holiday or weekend in London. If the fifteenth calendar day is a holiday or weekend in London, trading shall end three business days prior to the last business day preceding the fifteenth calendar day.

58. Trading in NYMEX Brent Crude Oil Last-Day Futures (BZ), Brent Financial Futures (CY), and Brent Crude Oil Futures (BB) is subject to the rules and regulations of the NYMEX, and prices are quoted in U.S. dollars and cents per barrel.

59. The daily settlements for the NYMEX Brent Crude Oil (BB) and the Brent Crude Oil Last Day (BZ) futures contracts are equivalent to the settlements in the corresponding ICE Brent Crude Oil futures contracts, discussed below.

60. Final settlement for the NYMEX Brent Crude Oil futures contract (BB) is based on its Floating Price. The Floating Price is equal to the Brent Crude Oil (ICE) Futures 1st nearby contract settlement price on the penultimate trading day for the delivery month.

61. Final settlement for the NYMEX Brent Crude Oil Last Day (BZ) is based on its Floating Price. The Floating Price is equal to the ICE Brent Crude Oil Index price as published one day after the final trading day of the contract month.

62. Final settlement for the NYMEX Brent Financial Futures (CY) is based on its Floating Price. The Floating Price is equal to (a) the arithmetic average of the Brent Crude Oil (ICE) Futures 1st nearby contract settlement prices, except as set forth in Section (B) below, for

each business day that it is determined during the contract month. (B) The Settlement price of the 1st nearby contract month will be used except on the last day of trading for the expiring Brent Crude Oil Futures contract when the settlement price of the 2nd nearby Brent Crude Oil Futures contract will be used.

b. ICE

63. ICE Futures is the second largest regulated energy futures exchange in the world. ICE Futures hosts more than 50% of the world's crude and refined oil futures trading, and the ICE Brent Crude futures contract is relied upon to price two-thirds of the world's physical oil. ICE Futures is regulated by the U.K. Financial Conduct Authority, with oversight by the U.S. Commodity Futures Trading Commission for linked contracts.

64. The Ice Brent crude oil futures contract is traded at ICE Futures Europe and executed on the WebICE trading platform, which is distributed in more than 70 countries, including the U.S. As on the NYMEX, ICE Futures oil contracts trade in increments of 1,000 barrels.

65. In 2012, the ICE Brent futures contract became the world's largest crude oil futures contract in terms of volume, and the volume of Brent crude oil futures contracts traded on ICE has almost doubled since 2008.

66. ICE Brent crude oil futures contracts is a deliverable contract based on "exchange for physical" ("EFP") delivery with an option to cash settle, *i.e.*, the ICE Brent Index price for the day following the last trading day of the futures contract.

67. Trading in ICE Brent futures contracts terminates at the end of the designated settlement period on the Business Day (a trading day which is not a public holiday in England and Wales) immediately preceding: (i) either the 15th day before the first day of the contract

month, if such 15th day is a Business Day; or (ii) if such 15th day is not a Business Day, the next preceding Business Day.

68. Prices of ICE Brent crude oil futures contracts are quoted in U.S. dollars and cents per barrel.

69. Existing ICE Brent crude oil futures currently expire 10 days after BFOE contracts have started to go “wet,” *i.e.*, to turn into specific Dated Brent contracts with respect to the contract delivery month in question.

70. As per ICE, “[t]he ICE Brent futures contract is based on the underlying physical BFOE (Brent-Forties-Oseberg-Ekofisk) market . . . The ICE Brent futures contract is linked to forward BFOE contracts and hence the underlying Dated Brent market by the Exchange for Physical (EFP) mechanism. The contract settles against the Ice Brent Index price for the day following the last trading day of the Brent futures contract. At expiry of a Brent futures contract, the index price is based on the average value of BFOE cash cargoes on expiry day. The index is also calculated by the exchange every day.”

71. Further, as per ICE, “[t]he cash settlement price for ICE Brent. . . is based on the ICE Brent Index at their respective expiries. The index represents the average price of trading in the 25-day ‘cash’ BFOE market in the relevant delivery month as reported and confirmed by the industry media [Platts]. . . The index is calculated by the Exchange as an average of the following elements: (1) A weighted average of first month cargo trades in the 25-day BFOE market. (2) A weighted average of second month cargo trades in the 25-day BFOE market plus a straight average of the spread trades between the first and second months. (3) A straight average of designated assessments published in media reports [Platts].”

72. In response to Platts extending its assessment period to 10-25 days, ICE launched the ICE Brent NX Brent futures contract, which have an expiry calendar based on the 25-Day BFOE market and therefore align the futures expiry calendar with the physical BFOE market.

C. U.S. Based Transactions

73. On November 12, 1999, the CFTC issued a no-action letter in which it confirmed that it would not recommend that the CFTC institute enforcement action against the International Petroleum Exchange of London Limited (“IPE”) (acquired by ICE in 2001) or its members solely based upon IPE’s failure to obtain contract market designation pursuant to Sections 5 and 5a of the CEA, “if: (i) IPE members trade for their proprietary accounts through ETS [Energy Trading System II] in the United States; (ii) IPE members who are registered with Commission as [futures commission merchants] FCMs or who are Rule 30.10 Firms submit orders from United States customers for transmission to ETS; and/or (iii) IPE members who are registered with the Commission as FCMs or who are Rule 30.10 Firms accept orders through United States [automated order routing systems] AORS from United States customers for submission to ETS.” CFTC Staff Letter No. 99-69 (Nov. 12, 1999), at p. 15 (emphasis added).

74. The November 12, 1999 IPE no-action letter was amended by the CFTC four times between July 26, 2002 and April 14, 2003 as trading of the contracts was transitioned from the ETS to ICE Platform operated by the Intercontinental Exchange, Inc. in Atlanta, Georgia and trading hours were extended. CFTC Staff Letter No. 09-37 (Aug. 20, 2009), at p. 2.

75. On April 14, 2003, the CFTC issued a no-action letter in which it amended its November 12, 1999 no-action letter and confirmed that it would not recommend that the CFTC institute enforcement action against IPE or its members solely based upon IPE’s failure to seek contract market designation or registration as a derivatives transaction execution facility under

Sections 5 and 5a of the CEA “if the IPE makes all of its current contracts, including Brent Crude futures. . . available in the U.S. on the ICE Platform during the course of the entire trading day.” CFTC Staff Letter No. 03-17 (April 14, 2003), at p. 3 (emphasis added).

D. The Role of Platts in the Brent Crude Oil Market

76. Almost all physical BFOE crude oil is traded in the private market where the transaction details are not readily observable. As a result, Platts plays the central role in establishing and reporting spot prices of Brent Crude oil.

77. Participation in the Platts’ MOC is entirely voluntary. Traders need not submit their bids to Platts.

78. Platts’ MOC Brent Crude oil spot price is the most important price market for Brent Crude oil in the world.

79. On June 19, 2013, in a *Wall Street Journal* article entitled “Traders Try to Game Platts Oil-Price Benchmarks” the strategy for traders in the spot market for oil was discussed. The article stated that “Deals are negotiated in private, and buyers and sellers aren’t required to disclose prices to anyone.”

80. In that same article, it was noted that “to come up with a benchmark price, Platts has to rely on information volunteered by traders- a far cry from the way stocks or even oil futures are priced by crunching comprehensive data from public exchanges.”

81. The Brent Crude oil futures market can be thought of as a clearinghouse for trades among buyers and sellers of Brent Crude oil futures contracts, which are standardized contracts used to price Brent crude oil at various maturities. The Brent Crude oil futures market is inextricably linked to the spot market for Brent Crude oil and thus to Platts pricing and price movements in the spot market can cause movements in the futures markets.

82. In particular, Brent Crude oil futures traders refer to the spot prices published by the reporting firms, such as Platts, for price discovery and for assessing price risks in the Brent Crude oil market. An increase in the spot price published by Platts signals either stronger demand or weakened supply, and futures traders take account of both price movements and changes in the supply/demand balance when making futures trades. Brent crude oil futures prices derive their valuation from spot transactions. The spot market is the first point in a commercial transaction. Brent Crude oil spot and futures prices are sympathetic in they move in the same direction.

83. One trader has been quoted in the *Wall Street Journal* article that noted that “the intention is to skew oil benchmarks.”

84. Scott O’Malia of the U.S. Commodity Futures Trading Commission calls oil price rigging “an area we have specific concern.”

85. The EC has confirmed that on May 14, 2013 that it, along with the EFTA Surveillance Authority, had carried out unannounced inspections of several companies active in and providing services to the crude oil, refined oil products, and biofuels sectors. The EC undertook the inspections on concerns that (i) the companies may have colluded in reporting distorted prices to a Price Reporting Agency (“PRA”) to manipulate the published prices for a number of oil and biofuel products; and (ii) the companies may have prevented others from participating in the price assessment process, with a view of distorting published prices.

86. Almost immediately following the EC’s May 14 announcement, Defendants BP plc, Royal Dutch Shell plc, and Statoil ASA each confirmed they are the subject of the EC investigation. Statoil also confirmed that the scope of the EC’s investigation is “related to the Platts’ Market-On-Close price assessment process, used to report prices in particular for crude

oil, refined oil products and biofuels.” The scope of the investigation extends as far back as early 2002.

87. On May 17, 2013, the U.K. Serious Fraud Office announced that it was “urgently reviewing” the EC’s allegations of price-fixing in the oil markets and determining whether to accept the case for “criminal investigation.” That same day, the United States Senate called for the U.S. Department of Justice to join the EC investigation.

88. The FTC has also joined in on the investigation into how crude oil prices are set when on June 24, 2013, a little over a month after the EC investigation announcement; it became known that the FTC will scrutinize how price reporting companies such as Platts help determine the cost of raw materials.

89. *Think Progress* reported on June 25, 2013 that “[t]he investigation is new, but the rigging behavior is apparently widely known, with one former trader calling it ‘an open secret within the oil industry.’”

II. Defendants’ Intentionally Manipulated Brent Crude Oil Futures Prices by Falsely Reporting Brent Crude Oil Spot Prices to Platts

90. Defendants purposefully manipulated prices of Brent Crude oil and Brent Crude oil futures contracts through their deliberate and systematic submission of false Brent Crude oil trade information to Platts.

91. Defendants knew that this false trade information was used by Platts in calculating and publishing its Brent crude oil prices. Further, they also knew, as sophisticated market participants, that the (mis)information they reported impacted the prices of Brent Crude oil futures contracts and other Brent Crude oil derivative contracts traded in the U.S.

CLASS ACTION ALLEGATIONS

92. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on its own behalf and as a representative of the following Class:

All persons or entities (other than Defendants and any parent, subsidiary, affiliate, or agent of any Defendant) that purchased or sold a Brent Crude Oil futures contract on the NYMEX or ICE during the period of at least 2002 through the Present (the "Class Period").

93. The Class is so numerous that the individual joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, Plaintiff believes that at least thousands of geographically dispersed Class members transacted in Brent Crude Oil futures contracts on the NYMEX or ICE during the Class Period.

94. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and the members of the Class sustained damages arising out of Defendants' common course of conduct in violation of law as complained of herein. The injuries and damages of each member of the Class were directly caused by Defendants' wrongful conduct in violation of the laws as alleged herein.

95. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff is an adequate representative of the Class and has no interests which are adverse to the interests of absent Class members. Plaintiff has retained counsel competent and experienced in class action litigation, including commodity futures manipulation and antitrust class action litigation.

96. Common questions of law and fact exist as to all members of the Class which predominate over any questions affecting solely individual members of the Class. These common questions of law and facts include, without limitation:

- a. Whether Defendants manipulated Brent Crude Oil futures contracts in violation of the CEA;
- b. Whether such manipulation caused Brent Crude Oil futures contracts to be artificially inflated or deflated;
- c. Whether Defendants manipulation caused cognizable legal injury under the CEA;
- d. Whether Defendants violated Section 1 of the Sherman Act;
- e. Whether Defendants' unlawful conduct caused injury to the business or property of Plaintiff and the Class;
- f. Whether Defendants were unjustly enriched at the expense of Plaintiff and members of the Class;
- g. Whether such injury or the fact or extent of such artificiality may be established by common, class-wide means, including, for example, by regression analysis, econometric formula, or other economic tests.

97. A class action is superior to other methods for the fair and efficient adjudication of this controversy because joinder of all Class members is impracticable. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of claims by many class members who could not afford individually to litigate claims such as those asserted in this Complaint. The cost to the court system of adjudication of such individualized litigation would be substantial. The prosecution of separate actions by

individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

98. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

EQUITABLE TOLLING AND FRAUDULENT CONCEALMENT

99. By its very nature, the unlawful activity alleged herein, that Defendants engaged in was self-concealing. Defendants, *inter alia*, falsely report prices and volume and trade information to Platts in order to manipulate the spot price for Brent crude oil and the prices of Brent crude oil futures contracts traded on the NYMEX and ICE.

100. Plaintiff and the other members of the Class had no knowledge of the unlawful conduct alleged in this Complaint, or of any facts that could or would have led to the discovery thereof, until it became public. The first public reports of any government action relating to Defendants' unlawful conduct occurred on or about May 14, 2013, when the EC confirmed that it carried out unannounced inspections at the premises of several companies active in and providing services to the crude oil, refined oil products and biofuels sectors, alleging that these companies colluded in reporting artificial prices to a PRA to manipulate the published prices for a number of oil and biofuel products.

101. Because the Defendants employed acts and techniques that were calculated to wrongfully conceal the existence of such illegal conduct, Plaintiff and the Class could not have discovered the existence of this unlawful conduct any earlier than its public disclosure in May 2013.

102. Due to Defendants' fraudulent concealment, any applicable statute of limitations affecting or limiting the rights of action by Plaintiff or members of the Class has been tolled during the period of such fraudulent concealment.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(For Manipulation in Violation of the Commodity Exchange Act, 7 U.S.C. §§ 1, *et seq.*)

Against All Defendants

103. Plaintiff realleges and incorporates the preceding allegations of this Complaint with the same force and effect as if fully restated herein.

104. By their intentional misconduct, the Defendants each violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), and caused prices of Brent Crude Oil futures contracts to be artificial, during the Class Period.

105. Defendants' trading and other activities alleged herein constitute market power manipulation of the prices of Brent Oil futures contracts in violation of Sections 9(a) and 22(a) of the CEA, 7 U.S.C. §§ 13(a) and 25(a).

106. Defendants' foregoing extensive manipulation conduct deprived Plaintiff and other traders of a lawfully operating market during the Class Period.

107. Plaintiff and others who transacted in Brent Crude Oil futures contracts during the Class Period transacted at artificial and unlawful prices resulting from Defendants' manipulations in violation of the Commodity Exchange Act, 7 U.S.C. § 1, *et seq.*, and as a direct result thereof were injured and suffered damages.

108. Plaintiff and the Class are each entitled to damages for the violations of the CEA alleged herein.

109. Plaintiff and members of the Class who purchased or sold NYMEX Brent Crude Oil futures contracts during the Class Period were injured and are each entitled to their actual damages for the violations of the CEA alleged herein.

SECOND CLAIM FOR RELIEF

**(For Principal-Agent Liability in Violation of the Commodity Exchange Act,
7 U.S.C. §§ 1, *et seq.*)**

Against All Defendants

110. Plaintiff realleges and incorporates the preceding allegations of this Complaint with the same force and effect as if fully restated herein.

111. Each Defendant is liable under Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B), for the manipulative acts of their agents, representatives, and/or other persons acting for them in the scope of their employment.

112. Plaintiff and member of the Class are each entitled to actual damages sustained in NYMEX Brent Crude Oil futures contracts for the violations of the CEA alleged herein.

THIRD CLAIM FOR RELIEF

**(For Aiding and Abetting Manipulation in Violation of the Commodity Exchange Act,
7 U.S.C. §§ 1, *et seq.*)**

Against All Defendants

113. Plaintiff realleges and incorporates the preceding allegations of this Complaint with the same force and effect as if fully restated herein.

114. Defendants knowingly aided, abetted, counseled, induced and/or procured the violations of the CEA alleged herein. Defendants did so knowing of each other's manipulation of Brent crude oil market prices, and willfully intended to assist these manipulations, which

resulted in Brent Crude Oil futures contracts to reach artificial levels, during the Class Period in violation of Section 22(a)(1) of the CEA, 7 U.S.C. §25(a)(1).

115. Plaintiff and member of the Class are each entitled to actual damages sustained in NYMEX Brent Crude Oil futures contracts for the violations of the CEA alleged herein.

FOURTH CLAIM FOR RELIEF

(For Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, et seq.)

Against All Defendants

116. Plaintiff realleges and incorporates the preceding allegations of this Complaint with the same force and effect as if fully restated herein.

117. Defendants entered into and engaged in a conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act and Section 4 of the Clayton Act.

118. During the Class Period, Defendants possessed market power in the setting of Brent crude oil and the prices of Brent crude oil futures contracts.

119. The conspiracy consisted of a continuing agreement, understanding or concerted action between and among Defendants and their co-conspirators in furtherance of which Defendants fixed, maintained, suppressed and/or made artificial Brent crude oil market prices and the prices of Brent Crude Oil futures contracts. Defendants' conspiracy is a *per se* violation of the federal antitrust laws and is, in any event, an unreasonable and unlawful restraint of trade.

120. Defendants' conspiracy, and resulting impact on Brent crude oil market prices and the prices of Brent Crude Oil futures contract, occurred in or affected interstate and international commerce.

121. As a proximate result of Defendants' unlawful conduct, Plaintiff and members of the Class have suffered injury to their business or property.

122. As a consequence, Plaintiff and the Class are each entitled to treble damages for the Defendants' violations of the Sherman Act alleged herein, and a permanent injunction restraining Defendants from engaging in additional anticompetitive conduct.

FIFTH CLAIM FOR RELIEF

(For Unjust Enrichment)

Against All Defendants

123. Plaintiff realleges and incorporates the preceding allegations of this Complaint with the same force and effect as if fully restated herein.

124. Defendants financially benefited from their unlawful acts. These unlawful acts caused Plaintiff and other members of the Class to suffer injury, lose money, and transact Brent Crude Oil futures contracts at artificial prices.

125. As a result of the foregoing, it is unjust and inequitable for Defendants to have enriched themselves in this manner.

126. Each Defendant should pay restitution or its own unjust enrichment to Plaintiff and members of the Class.

127. Plaintiff and members of the Class are entitled to the establishment of a constructive trust impressed on the benefits to Defendants from their unjust enrichment and inequitable conduct.

PRAYER FOR RELIEF

Accordingly, Plaintiff demands relief as follows:

A. For an order certifying this lawsuit as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and designating Plaintiff as the Class representative, and its counsel be appointed as Class counsel;

B. For a judgment awarding Plaintiff and the Class damages against Defendants for their violations of the CEA, together with prejudgment interest at the maximum rate allowable by law;

C. For the unlawful conduct alleged herein to be adjudged and decreed to be an unlawful restraint of trade in violation of Section 1 of the Sherman Act;

D. For Defendants, their subsidiaries, affiliates, successors, transferees, assignees and the respective officers, directors, partners, agents, and employees and all other persons acting or claiming to act on their behalf, be permanently enjoined and restrained from continuing and maintaining the conspiracy alleged in the Complaint;

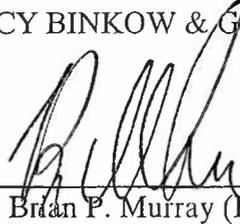
E. For a judgment award Plaintiff and the Class damages against Defendants for their violations of the federal antitrust laws, in an amount to be trebled in accordance with such laws;

F. For a judgment awarding Plaintiff and the Class restitution of any and all sums received by the Defendants' unjust enrichment; and

G. For an award to plaintiff and Class of their costs of suit, including reasonable attorneys' and experts' fees and expenses.

Dated: July 1, 2013

GLANCY BINKOW & GOLDBERG LLP

By: 

Brian P. Murray (BM 9954)

Lee Albert (*pro hac vice* to be filed)

122 East 42nd Street, Suite 2920

New York, NY 10168

Telephone: (212) 682-5340

Fax: (212) 884-0988

Lionel Z. Glancy
GLANCY BINKOW & GOLDBERG LLP
1925 Century Park East
Suite 2100
Los Angeles, CA 90067
Telephone: (310) 201-9150
Fax: (310) 201-9160

David E. Kovel
KIRBY McINERNEY LLP
825 Third Avenue
New York, NY 10022
Telephone: (212) 371-6600
Fax: (212) 751-2540

Attorneys for Plaintiff