UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

AOT HOLDING AG, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	**Case No. 19-CV-2240**
ARCHER DANIELS MIDLAND CO.,	)	
Defendant.	)	

ORDER

Plaintiff, AOT Holding AG, on behalf of all other similarly situated, filed a Class Action Complaint (#1) against Defendant Archer Daniels Midland Company ("ADM") on September 4, 2019, alleging ADM manipulated the benchmark price of ethanol downward in violation of the Commodity Exchange Act (7 U.S.C. §1, et seq.) ("CEA"). ADM filed a Motion to Dismiss (#14) on November 4, 2019, to which Plaintiff filed a Memorandum in Opposition (#20) on November 18, 2019, to which ADM filed a Reply (#22) on November 26, 2019. Plaintiff then filed a Motion to File a Response to ADM's New Argument (#23) on December 2, 2019, which the court granted and allowed to be filed on April 23, 2020. For the following reasons, ADM's Motion to Dismiss (#14) is GRANTED in part and DENIED in part.

Summary of Complaint

This is a putative class action case involving alleged manipulation of the market price of ethanol by ADM. Plaintiff alleges that the manipulation occurred at the Argo, Illinois, fuel terminal, the scene of daily trading for ethanol. The specific trading in question occurred during the half hour "Market-on-Close" (MOC) window, a 30-minute trading period for ethanol transactions between 1 and 1:30 pm every trading day at the Argo Terminal. This trading window is crucial, because S&P Global Platts ("Platts"), a provider of trading information in the ethanol market and other markets, creates the daily Chicago Benchmark Price that determines the value of Chicago Ethanol Derivatives. Platts uses the trading during the MOC to determine the daily Chicago Benchmark Price. The benchmark price is used to price and settle numerous ethanol derivatives on the New York Mercantile Exchange ("NYMEX") and the Chicago Board of Trade ("CBOT"), commodity exchanges operated by CME Group, Inc.

Plaintiff AOT Holding AG alleges that, starting in November 2017 and continuing through the filing of the instant suit in 2019, ADM flooded Argo terminal with ethanol that it intentionally sold at artificially low prices in order to juice the profits on its outsized short positions in related ethanol derivatives. Plaintiff alleges that ADM "dramatically" shifted from buying to selling ethanol at Argo at the start and for the duration of the alleged manipulation period; continued to produce and sell at Argo even as prices fell and profits evaporated; sold at Argo for less than it could have

received elsewhere; sold at prices below its variable cost of production; and priced ethanol so aggressively during the MOC window that it captured 90% of all sales influencing the Chicago Benchmark Price, despite having only 10% share of the US ethanol market.

At the same time, ADM orchestrated a scheme wherein it took massive "short" positions in ethanol derivatives, betting that the price of ethanol would decline further. To make sure that these derivative speculations would be extremely profitable, Plaintiff alleges that ADM intentionally manipulated the price of ethanol downward through its actions at the Argo Terminal.

Plaintiff has sued ADM alleging that its "manipulative conduct and trading activity alleged herein constituted manipulation of the Chicago Ethanol Terminal price used to settle/price the aforementioned Chicago Ethanol Derivatives between November 2017 and the present, in violation of the Commodity Exchange Act, 7 U.S.C. §§ 6b(a), 6c(a), 9(1), 9(3), 13(a)(2), and 25(a), as well as 17 C.F.R. § 180.2."

Dismissal Under Rule 12(b)(6)

ADM raises two main arguments in its Motion to Dismiss: (1) Plaintiff cannot state a claim for illegal manipulation under the CEA because it failed to plead facts plausibly showing that ADM illegally manipulated the ethanol benchmark price, and, instead, the conduct alleged is more consistent with routine market conduct in line with a wide swath of rational and competitive business strategies; and (2) Plaintiff failed to plead facts that plausibly show an injury.

In deciding a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the court accepts as true the well-pleaded facts in the complaint and draws from those allegations all reasonable inferences in the plaintiff's favor. *Park Pet Shop, Inc. v. City of Chicago*, 872 F.3d 495, 499 (7th Cir. 2017). To survive a motion under Rule 12(b)(6), the complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Park Pet Shop*, 872 F.3d at 499, quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable" as alleged in the complaint. *Park Pet Shop*, 872 F.3d at 499, quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The court finds that, at this stage of the proceedings, taking all the allegations in Plaintiff's Complaint (#1) as true, reading the allegations in the light most favorable to Plaintiff, and drawing all inferences in its favor, Plaintiff has stated a claim that is plausible on its face and upon which relief could be granted. See *Twombly*, 550 U.S. at 570. The court further finds that Plaintiff's Complaint describes the claim in sufficient detail to give ADM fair notice of what the claim is and the grounds upon which it rests. See *Lugg v. Sutton*, 368 F.Supp.3d 1257, 1260 (C.D. Ill. 2019), citing *EEOC v. Concentra Health Services, Inc.*, 496 F.3d 773, 776 (7th Cir. 2007). The court makes no determination on the merits of ADM's arguments, and all of ADM's arguments may be reraised at a later stage in the proceedings where the record can be more fully developed "and when the applicable procedural rules permit a more fulsome and searching analysis." See *Access 4 All, Inc. v. Chicago Grande, Inc.*, 2007 WL 1438167, at *1 (N.D. Ill. May 10, 2007).

Individual Statutory Causes of Action

Defendant argues that, even the case is not dismissed in its entirety under 12(b)(6), the Complaint's sole count should be dismissed to the extent it is based on asserted violations of 7 U.S.C. §§ 6b(a) and 6c(a).

7 U.S.C. §§ 6b(a)

Section 6b(a) of the CEA, generally, prohibits fraud in commodity futures contracts, and to establish a violation of the CEA's anti-fraud provisions, a plaintiff must prove: (1) the making of a misrepresentation, misleading statement, or a deceptive omission; (2) scienter; and (3) materiality. *Commodity Futures Trading Commission v. International Financial Services (New York), Inc.*, 323 F.Supp.2d 482, 499 (S.D.N.Y. 2004), citing *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 104, 115 (11th Cir. 2002). Such facts must be pled with "particularity." *DGM Investments, Inc. v. New York Futures Exchange, Inc.*, 265 F.Supp.2d 254, 263 (S.D.N.Y. 2003); *Commodity Futures Trading Commission v. American Metals Exchange Corp.*, 693 F.Supp. 168, 190 (D.N.J. 1988) (fraud based complaints under the CEA must be pled with sufficiently particularity to comply with Federal Rule of Civil Procedure 9(b)). A plaintiff must additionally show that the fraud was: (1) in connection with an order to make or the making of a contract of sale of a commodity for future delivery, and (2) made for or on behalf of another person. *Commodity Trading Futures Commission v. Driver*, 877 F.Supp.2d 968, 977 (C.D. Cal. 2012).

Plaintiff does not dispute, or even respond to, ADM's argument that it has not specifically pled that ADM made a misrepresentation in connection with any order to make or the making of any contract of sale of any commodity, or that ADM even made

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