

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X  
COMMODITIES FUTURES TRADING  
COMMISSION,

Plaintiff,

-against-

DAVID SMOTHERMON,

Defendant.  
----- X

MEMORANDUM DECISION  
AND ORDER

19 Civ. 4185 (GBD)

GEORGE B. DANIELS, United States District Judge:

Plaintiff Commodities Futures Trading Commission (the “CFTC”) brings this civil enforcement action against Defendant David Smothermon (“Defendant”). The CFTC alleges that from December 2015 to September 2016, Defendant made numerous fraudulent misrepresentations in internal recordkeeping system that materially misled his employer. (*See* Compl., ECF No. 1, ¶ 1.) Defendant now moves to dismiss this action for failure to state a claim. (Mot. Dismiss, ECF No. 45.) Because the CFTC has adequately pled fraud in connection with a regulated futures transaction, the motion is DENIED.

**I. FACTUAL BACKGROUND<sup>1</sup>**

From 2011 to 2016, Defendant served as the president and head trader of the gas division of a large commodities-trading company (the “Company”). (Compl. ¶¶ 1, 15.) The gas division purchased and sold natural gas products, including but not limited to ethane, butane, and natural gasoline. (*Id.* ¶ 14.) As head trader of the gas division, Defendant had sole responsibility for trading natural gas futures, options on futures, and over-the-counter swaps on behalf of the Company. (*Id.* ¶¶ 19, 21.) Defendant was also responsible for the gas division’s “physical” trades,

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<sup>1</sup> All facts are drawn from the Complaint and presumed to be true.

in which forward contracts for various natural gas products were scheduled to be physically settled at a future date. (*Id.* ¶¶ 22–23.)

To manage its financial risk and track its various positions, the Company required the gas division to enter all trading information into the Company’s internal trading and traffic recordkeeping system (“T&T System”). (*See id.* ¶¶ 4, 24, 28.) Anytime Defendant entered into a financial product position, his practice was to convey the terms of the position—including the product, quantity, price, and delivery month—to one of two administrative employees, who would then enter the information into the Company’s T&T System. (*Id.* ¶ 24.) Similarly, when Defendant or another trader at the gas division entered into a physical contract, they would convey the terms of the physical contract to one of the administrative employees. (*Id.* ¶¶ 25–27.) The administrative employee would then prepare a written contract reflecting the agreed-upon terms and enter those terms into the Company’s T&T system. (*Id.* ¶ 27.)

The gas division used the information entered into the T&T System to produce trading reports for the Company. (*Id.* ¶ 30.) These reports reflected, among other things, the gas division’s physical and financial positions, including the mark-to-market<sup>2</sup> value of those positions. (*Id.* ¶ 33.) As president and head trader of the gas division, Defendant was responsible for ensuring these reports contained accurate market information. (*Id.* ¶ 34.) He was also typically copied on emails sending the reports to the Company and was therefore aware of the reports’ final contents. (*Id.* ¶ 32.)

It is undisputed that beginning in or around December 2015, Defendant entered, or caused to be entered, false or misleading information on the gas division’s physical and financial positions

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<sup>2</sup> Mark-to-market is an accounting method that involves “[r]ecording the price or value of a security, portfolio or account on a daily basis, to calculate profits and losses or to confirm that margin requirements are being met.” *Fadem v. Ford Motor Co.*, 352 F. Supp. 2d 501, 512 n.7 (S.D.N.Y.), *aff’d*, 157 F. App’x 398 (2d Cir. 2005) (internal quotation marks and citation omitted).

into the T&T System. (*Id.* ¶ 1.) Specifically, between December 2015 and September 1, 2016, Defendant deceptively mismarked the daily mark-to-market value of numerous futures positions in the Company's T&T system. (*Id.* ¶ 39.) The CFTC alleges that these mismarkings concealed from the Company the scale of the gas division's mark-to-market trading losses. (*Id.* ¶ 41.) During that same time period, Defendant also directed administrative employees to change the terms and values of the gas division's physical trades in the T&T system. (*Id.* ¶ 61.) To make the physical trades appear more profitable, Defendant would alter the physical trades' contract price, quantity, or mark-to-market price. (*See id.* ¶¶ 62–64.) By August 2016, Defendant's marks on the gas division's trading book deviated from the New York Mercantile Exchange's ("NYMEX") daily settlements and the true mark-to-market values of the Company's Futures Commission Merchant ("FCM") by over \$100 million. (*Id.* ¶ 81.)

In or around May 2016, the Company awarded Defendant a bonus of over \$14 million. (*Id.* ¶ 18.) Of that amount, \$3.5 million was deferred. (*Id.*) This bonus was based on Defendant's and the gas division's performance in 2015, specifically, the value of the gas division's trading book as measured by its mark-to-market profit-and-loss. (*Id.*)

In August 2016, the Company notified Defendant that it was preparing to do an internal audit of the gas division. (*Id.* ¶ 82.) On or around September 1, 2026, Defendant admitted to both a colleague and the Company that he had mismarked his trading book and understated the gas division's losses. He resigned from the Company that same day. (*Id.* ¶¶ 84–85.) After Defendant's resignation, the Company unwound numerous positions that Defendant had falsely inflated. This led to the Company suffering over \$100 million in realized losses. (*Id.* ¶¶ 6, 87.)

These losses forced the Company to sell assets, unwind business lines, and lay off approximately 200 employees. (*Id.* ¶ 88.)

On May 9, 2019, the CFTC commenced this civil action against Defendant, alleging violations of the CEA and its regulations. The CFTC seeks an order finding that defendant violated the CEA and injunctive relief barring him from trading. (*Id.* at 16–19.)

On May 23, 2019, the U.S. Attorney’s Office in the Southern District of New York filed a parallel criminal indictment against Defendant. (Mot. to Lift Stay, ECF No. 32 at 2.) Defendant subsequently moved to stay the civil case pending resolution of the criminal case, which this Court granted on July 15, 2019. (ECF No. 16.)

Following six years of criminal proceedings, Defendant pleaded guilty to one count of wire fraud. (*See* Mot. to Lift Stay at 2.) During his plea proceeding, Defendant admitted that he was responsible for marking the value of his trades in the Company’s accounting system and that he overvalued those trades to obtain a discretionary bonus.<sup>3</sup> (Plea Tr., ECF No. 47-2, at 20:3–21:8.) On November 25, 2025, the district court sentenced Defendant to 36 months’ incarceration and ordered him to pay \$19,550,081.00 in restitution. (Mot. to Lift Stay at 2.) On March 17, 2026, this Court lifted its prior stay. (ECF No. 34, at 1).

On April 7, 2026, Defendant moved to dismiss the matter for failure to state a claim for relief, (Mot. Dismiss,) and filed an accompanying memorandum of law, (Mem. L. Supp. Mot. Dismiss (“Def. Mem.”), ECF No. 46.) On April 28, 2026, CFTC filed its opposition, (Opp’n, ECF

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<sup>3</sup> Defendant admitted to the Court, “In 2016, I intentionally overvalued some of the trades I had made. I did this to obtain a discretionary bonus that I had earned from the prior year. . . . I overvalued the trades in order to deceive [the Company] into believing the value of my trading book was higher than it actually was.” (Plea Tr., ECF No. 47-2, at 20:9–20.)

No. 47) and on May 12, 2026, Defendant filed a reply, (Reply, ECF No. 48.) On June 9, 2026, this Court heard oral arguments on Defendant's motion. (ECF Minute Entry 06/09/2026).

## II. LEGAL STANDARD

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When ruling on a motion to dismiss under Rule 12(b)(6), the court must accept all factual allegations in the complaint as true and draw all reasonable inferences in the nonmovant's favor. *Nielsen v. Rabin*, 746 F.3d 58, 62 (2d Cir. 2014) (citing *Rothstein v. UBS AG*, 708 F.3d 82, 94 (2d Cir 2013)). "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 for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Claims merely "consistent" with liability are insufficient, and the "[f]actual allegations must be enough to raise a right to relief above the speculative level," *Twombly*, 550 U.S. at 555, 557.

Additionally, because the CFTC's allegations sound in fraud, its claims are subject to the heightened pleading requirements of Federal Rule of Civil Procedure 9(b) ("Rule 9(b)"). *See Commodity Futures Trading Comm'n v. Gorman*, 587 F. Supp. 3d 24, 38 (S.D.N.Y. 2022) (noting that claims under the CEA based on misrepresentations or omissions must satisfy the heightened pleading requirements of Rule 9(b)). To satisfy Rule 9(b), the CFTC must "(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent." *Wu v. Bitfloor, Inc.*, 460 F. Supp. 3d 418, 423 (S.D.N.Y. 2020) (quoting *Anschutz Corp. v. Merrill Lynch & Co.*, 690 F.3d 98, 108 (2d Cir. 2012)).

### III. THE MOTION TO DISMISS IS DENIED

The CFTC alleges two violations of the CEA. Count I asserts that Defendant used fraud by manipulative or deceptive device or contrivance in violation of section 6(c)(1) of the CEA (“Section 6(c)(1)”), 7 U.S.C. § 9(1), and the agency rule promulgated thereunder, 17 C.F.R. § 180.1(a). Count II asserts that Defendant engaged in fraud in connection with futures contracts in violation of Section 4b(a)(1) of the CEA (“Section 4b”). 7 U.S.C. § 6b(a)(1). Defendant moves to dismiss both counts on the grounds that the CFTC has failed to (1) adequately allege that Defendant’s deceptive conduct was “in connection with” a regulated transaction and (2) plead the alleged fraud with sufficient particularity.

#### A. The “In Connection With” Requirement

“The CEA broadly prohibits fraudulent and manipulative conduct in connection with commodity futures transactions.” *Commodity Futures Trading Comm’n v. Schor*, 478 U.S. 833, 836 (1986). Section 4b makes it unlawful:

for any person, **in or in connection with** any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person . . .

- (A) to cheat or defraud or attempt to cheat or defraud the other person;
- (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record;
- (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for . . . the other person . . . .

7 U.S.C. §§ 6b(a)(1), (2)(A)–(C) (emphasis added).

In the wake of the 2008 financial crisis, Congress enacted the Dodd-Frank Act, which provided the CFTC with “additional and broad authority to prohibit fraud and manipulation.” *See* Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation (“Prohibition on Manipulation”), 76 Fed. Reg. 41,398, 41,398 (July 14, 2011) (to be codified at 17 C.F.R. 180). As relevant here, section 753 of the Dodd-Frank Act added Section 6(c)(1) to the CEA. The new Section 6(c)(1) provides:

It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, **in connection with** any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate . . . .

7 U.S.C. § 9(1) (emphasis added).

Rule 180.1 implements section 6(c)(1)’s provisions, specifying that:

It shall be unlawful for any person, directly or indirectly, **in connection with** any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:

- (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;
- (2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements not untrue or misleading;
- (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person . . . .

17 C.F.R. § 180.1(a)(1)–(3) (emphasis added).

When analyzing the anti-fraud provisions of the CEA, courts are guided by interpretations of similar provisions in the securities context. *See e.g., Saxe v. E.F. Hutton & Co.*, 789 F.2d 105, 109 (2d Cir. 1986) (“Traditionally, courts have looked to the securities law when called upon to interpret similar provisions of the CEA.”); *Gorman*, 587 F. Supp. 3d at 40 (“Section 6(c)(1) and

Rule 180.1(a) are, respectively, carbon copies of Section 10(b) of the Securities Exchange Act and Rule 10b-5 promulgated by the Securities and Exchange Commission . . . .”); *S.E.C. v. Lee*, 720 F. Supp. 2d 305, 338 (S.D.N.Y. 2010) (“In interpreting the ‘in connection with’ requirement of the Commodities Exchange Act, courts generally look to interpretations of the “in connection with” requirement of 10(b) of the Securities Exchange Act.”).<sup>4</sup>

In *S.E.C. v. Zandford*, 535 U.S. 813, 815 (2002), the Supreme Court interpreted the phrase “in connection with the purchase or sale of any security” in § 10(b) of the Securities Exchange Act of 1934. The *Zandford* court explained that § 10(b)’s “in connection with” requirement “should be construed not technically and restrictively, but flexibly to effectuate its remedial purposes.” *Id.* at 819 (internal quotation marks and citation omitted). The court ultimately concluded that the requirement is satisfied where “the scheme to defraud and the sale of securities coincide.” *Id.* at 822; *see also Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 85 (2006) (noting the “broad interpretation” the Supreme Court has given § 10(b)’s and Rule 10b-5’s “in connection with” requirement). In the securities context, the Second Circuit has previously noted that the coincide standard is “easily satisfied.” *U.S. v. Nouri*, 711 F.3d 129, 143–44 (2d Cir. 2013).

As a result of this broad interpretation, courts have recognized a variety of scenarios in which an alleged fraud coincides with a regulated transaction. The plainest example is when a fraudster’s misrepresentations or omissions directly induce a transaction. *See e.g., Romano v. Kazacos*, 609 F.3d 512, 522 (2d Cir. 2010) (differentiating between the coincide requirement and the “more exacting ‘induced’ standard” and holding that § 10(b)’s “in connection with”

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<sup>4</sup> The CFTC’s final rule implementing Section 6(c)(1)’s provisions explicitly cites two securities cases to guide their interpretation of the CEA’s “in connection with” requirement: *S.E.C. v. Zandford*, 535 U.S. 813 (2002), which interpreted the “in connection with” requirement in § 10(b), and *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71 (2006), which analyzed similar language in the Securities Litigation Uniform Standards Act. *See Prohibition on Manipulation*, 76 Fed. Reg. at 41406 n.100.

requirement was satisfied where misrepresentations and omissions fraudulently induced securities transactions); *United States v. Ostrander*, 999 F.2d 27, 32–33 (2d Cir. 1993) (“Any payment to a portfolio manager intended to induce the purchase of a firm's securities on behalf of an investment company easily qualifies as a ‘fraudulent, deceptive or manipulative’ act ‘in connection with’ the investment company's acquisition of securities . . .”).

But courts have also found less direct connections sufficient. In *Commodity Futures Trading Comm'n v. Vartuli*, 228 F.3d 94, 101 (2d Cir. 2000), the Second Circuit held that false advertisements about the efficacy of a trading software were statements made “in connection with” futures trading. The Circuit reasoned that “misrepresentations about [the software], the way it functioned, the risks involved in using it, and the results it would produce were necessarily misrepresentations about all trades directed by the [software] system.” *Id.*; see also *R&W Tech. Servs. Ltd. v. Commodity Futures Trading Comm'n*, 205 F.3d 165, 172–73 (5th Cir. 2000) (holding that the sale of fraudulent investment advice is “‘in connection with’ the sale of a commodities future contract if the fraud relates to the risk of the trading and the primary purpose of purchasing the advice is to execute trades”). Similarly, in *Saxe*, the Second Circuit held that a recommendation for a third-party broker, which misrepresented the broker’s experience and the degree of risk of commodities trading, was made “in connection with” the trades that broker later made on the victim’s behalf. 789 F.2d at 110.

Courts have even found this requirement satisfied in cases of nonexistent or phony trades. See e.g., *In re J.P. Jeanneret Assocs., Inc.*, 769 F. Supp. 2d 340, 363 (S.D.N.Y. 2011) (holding that the “in connection requirement” is likely satisfied “where the [victims] part with money intending that it be invested in securities, only to have the person to whom that money is entrusted steal it”); *Commodity Futures Trading Comm'n v. Zhu*, No. 2:23-CV-4937 (MEMF) (AGRx), 2023

WL 12144272, at \*1, \*7 (C.D. Cal. Dec. 7, 2023) (holding that a scheme in which customers gave money to defendants “for the purpose of entering into contracts for the trading of forex and/or digital asset commodities,” was “in connection with” commodities trading despite no actual trading taking place on the customer’s behalf); *Jing v. Sun*, No. CV 21-2350 (GRB) (AYS), 2022 WL 1505950, at \*19 (E.D.N.Y. Jan. 4, 2022) (finding that the defendant’s statements were made “in connection with” the intended purchase of Bitcoin despite there being “no records of any such purchases or any evidence that Bitcoin ever made its way into any wallets on Plaintiff’s behalf”); *Commodity Futures Trading Comm’n v. Fin. Tree*, No. 2:20-CV-01184 (TLN) (AC), 2022 WL 36416, at \*5, \*13 (E.D. Cal. Jan. 4, 2022), *report and recommendation adopted*, No. 2:20-CV-01184 (TLN)(AC), 2022 WL 718391 (E.D. Cal. Mar. 10, 2022) (holding that the defendants violated Section 4b by operating a fraudulent commodity pool even though “[n]o trading” occurred in one of the defendants’ trading accounts and “limited forex trading” occurred in another).

The statute’s reach, however, is not unlimited. In *Zandford*, the Supreme Court noted that the “in connection with” requirement “must not be construed so broadly as to convert every common-law fraud that happens to involve securities into a violation of § 10(b).” 535 U.S. at 820. “If, for example, a broker embezzles cash from a client’s account or takes advantage of the fiduciary relationship to induce his client into a fraudulent real estate transaction, then the fraud would not include the requisite connection to a purchase or sale of securities.” *Id.* at 825 n.4. Thus, to satisfy the “in connection with” requirement, the scheme must do more than simply depend on the existence of previous transactions. As one court in this district put it, the alleged fraud must “concern the fundamental *nature* of the commodity futures contract.” *Kearney v. Prudential-Bache Sec. Inc.*, 701 F. Supp. 416, 424 (S.D.N.Y. 1988) (emphasis in original).

Here, the CFTC has adequately alleged that Defendant's scheme coincided with the commodities he traded on the Company's behalf. As detailed above, the CFTC alleges that from December 2015 to September 2016, Defendant entered false information into the Company's T&T system to inflate the value of the gas division's trading book and hide the extent of his trading losses. The trading reports that were generated from these erroneous entries gave the Company a misleading impression of the risk and quality of the trades Defendant had entered on the Company's behalf. (Compl. ¶¶ 28, 44–59.) These misrepresentations go directly to the “fundamental nature” of the gas division's physical and financial positions. *See Kearney*, 701 F. Supp. at 424–25 (“[M]aterial misrepresentations going to the risks involved or investment characteristics or quality of transactions are actionable.”). Defendant's fraud therefore coincides with the gas division's physical and financial positions.

Moreover, one can reasonably infer from the allegations in the Complaint that the Company would not have maintained the gas division's trading positions had it been aware of the extent of the gas division's losses. In *Dabit*, the Supreme Court held that a fraudulent manipulation of stock prices “coincided” with securities transactions where the plaintiffs “continued to hold their stocks long beyond the point when, had the truth been known, they would have sold.” 547 U.S. at 75, 85, 89 (relying on § 10(b) caselaw to interpret the Securities Litigation Uniform Standards Act's “in connection with” requirement). Here, the CFTC alleges that Defendant resigned from the Company on or around September 1, 2016, the same day he admitted to the Company that he had been mismarking his trading book. (Compl. ¶¶ 84–85.) Following Defendant's resignation, the Company was forced to unwind numerous mismarked positions, suffering total realized losses in excess of \$100 million. (*Id.* ¶¶ 86–87.) Drawing all reasonable inferences in the CFTC's favor, these allegations support the CFTC's claim that Defendant's

fraudulent acts materially misled the Company to maintain these positions. The Company's trading and the fraud are therefore not "independent events" that fall outside the ambit of the statute. *See Zandford*, 535 U.S. at 820.

Defendant advances several arguments to the contrary. First, Defendant argues that to state a CEA fraud claim, the CFTC must allege that the fraudulent acts occurred either before or during the trades in question. (*See* Def. Mem. at 9–10; Oral Arg. Tr., ECF No. 52, at 3:22–4:3.) Accordingly, Defendant reasons that his fraudulent acts were not "in connection with" the gas division's trades because the mismarking occurred after the trades were executed and did not directly induce a decision to trade. (*See* Reply at 2.)

This reads the "in connection with" requirement too narrowly. First, the text of the CEA's anti-fraud provisions does not include any sequencing requirement that would limit when a fraud needs to occur to state a claim. Further, courts have previously found violations of Section 4b based upon post-trade misrepresentations. *See, e.g., U.S. Commodity Futures Trading Comm'n v. LaMarco*, No. 2:17-cv-4087 (ADS)(AKT), 2019 WL 4247632, at \*4 (E.D.N.Y. Sept. 5, 2019) (denying motion to dismiss a Section 4b claim where the defendant made "fabricated statements [that] depicted fictitious returns showing the value of the commodity pool increase, notwithstanding the fact that [defendant] had lost nearly all of the participants' funds through unsuccessful trading and diversion of funds"); *Zhu*, 2023 WL 12144272, at \* 1, \*7 (holding that the "in connection with" requirement was satisfied where defendant provided commodity pool participants "false trading records and fail[ed] to disclose material information"). Even if post-trade misrepresentations do not induce the entering of a trade or order, they may still concern the fundamental attributes of a futures contract and be calculated to influence a victim's investment decisions. *See e.g., Alvin S. Schwartz, M.S., P.A. Emp./Emp. Profit Sharing Plan v. O'Grady*, No.

86 CIV. 4243 (JMC), 1990 WL 156274, at \*13 (S.D.N.Y. Oct. 12, 1990) (“[T]he alleged fraud induced plaintiffs to maintain their investments and thus, to continue to trade in commodities. A misrepresentation concerning the profitability of the contracts is indisputably a misrepresentation concerning the fundamental nature of the futures contracts.”). Here, Defendant’s mismarking concerned the risk and value of the gas division’s trading positions. That the Company put in place procedures to actively track these metrics further supports the conclusion that they concerned the fundamental nature of the investments. Defendant’s misrepresentations therefore coincided with the underlying transactions, regardless of the timing of the statements.

Defendant also asserts that the CFTC has not satisfied the “in connection with” requirement because the mismarkings were not sufficiently public facing. (*See* Def. Mem. at 10–14.) Defendant claims that the false entries are too attenuated from a regulated transaction because they were sequestered within the Company, did not alter the actual terms of the trades, or change their price on the open markets.<sup>5</sup> (Reply at 5–8.) But as detailed above, courts have consistently read the CEA’s anti-fraud provisions to reach fraudulent schemes that involved fictitious or phony trades that, by their nature, had no effect on the market price of any specific commodity or the terms of a trade. *See e.g., Fin. Tree*, 2022 WL 36416, at \*5, \*13. In those cases, it was sufficient that the misrepresentations influenced investment decisions of potential market participants. By comparison, the connection between Defendant’s fraudulent acts and the broader commodities market is much more direct: Defendant made false representations about the value of and risks

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<sup>5</sup> To support this point, Defendant highlights the fact that neither he nor the Company were “registrants,” and were therefore not obligated to file financial reports with the CFTC or make the type of public disclosures that could sway the broader commodities markets. (Def. Mem. at 19.) As explained below, the CEA does not require that a fraud cause a price impact or broadly affect market integrity. In any event, Defendant’s and the Company’s registration status is of limited value here because the CEA’s anti-fraud provisions clearly apply to “any person” engaging in prohibited conduct. 7 U.S.C. §§ 6b(a)(1), 9(1); 17 C.F.R. 180.1(a).

associated with actual futures positions and physical trades. These misrepresentations resulted in the Company having to unwind these positions on the market at a significant loss. This, too, is sufficient to state a CEA fraud claim.<sup>6</sup>

Finally, Defendant claims that the CFTC's claim under Section 6(c)(1) and Rule 180.1 must be dismissed because they have failed to plead either transaction or loss causation. (Def. Mem. at 14–17.) But the CFTC, as an administrative agency, is not required to prove transaction or loss causation in civil enforcement actions. *See Commodity Futures Trading Comm'n v. Int'l Fin. Servs. (New York), Inc.*, 323 F. Supp. 2d 482, 501 (S.D.N.Y. 2004) (“[W]here, as here, the CFTC, an administrative agency, brings an enforcement action, reliance is not a necessary element of a violation under the CEA.”); *cf. S.E.C. v. Lee*, 720 F. Supp. 2d at 325 (“Unlike private litigants, . . . the SEC is not required to prove investor reliance, loss causation, or damages in an action for securities fraud.”).

In sum, the CFTC has adequately alleged that Defendant's scheme to mismark the value of the gas division's book was done “in connection with” regulated transactions.

#### **B. Rule 9(b)'s Heightened Pleading Standard**

Defendant also argues that the Complaint must be dismissed because the CFTC has not sufficiently pled fraud. (*See* Def. Mem. at 19–20.) Namely, Defendant contests that the Complaint fails to identify the specific circumstances of the fraud, including the exact entries that were mismarked, the dates that each mismarking occurred, and the true values of the positions at the time they were mismarked. (*Id.*)

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<sup>6</sup> Additionally, this Court will not read a public facing requirement into the statute simply because Defendant made these misrepresentations as an employee of the Company. Again, Sections 4b and 6(c)(1) apply to fraud carried out by “any person.” 7 U.S.C. §§ 6b(a)(1), 9(1). These provisions prohibit employees engaging in fraud while acting on behalf of their employer to the same degree as brokers engaging in fraud while acting on behalf of clients. *See Merrill Lynch Futures Inc. v. Kelly*, 585 F. Supp. 1245, 1251 (S.D.N.Y. 1984) (holding that Section 4b applies to defendants' deceptive trades entered on behalf of their employer).

Rule 9(b) requires a complaint to “(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent.” *Gamm v. Sanderson Farms, Inc.*, 944 F.3d 455, 462–63 (2d Cir. 2019) (quoting *Mills v. Polar Molecular Corp.*, 12 F.3d 1170, 1175 (2d Cir. 1993)).<sup>7</sup> This rule “serves to provide a defendant with fair notice of a plaintiff’s claim, safeguard his reputation from improvident charges of wrongdoing, and protect him against strike suits.” *ATSI Commc’ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 99 (2d Cir. 2007).

Here, the CFTC has satisfied Rule 9(b)’s particularity requirements. The Complaint sufficiently identifies the allegedly fraudulent statements by (1) stating the types of trades Defendant was responsible for at the Company; (2) identifying the time period in which Defendant mismarked trades; and (3) providing six detailed examples of trades Defendant mismarked, how he carried this out, and to what effect. (Compl. ¶¶ 19–80.) The Complaint identifies Defendant as the actor behind these mismarkings. (*Id.* ¶ 1.) The Complaint also sufficiently identifies both the relevant time period and notes specific instances of Defendant mismarking trades. (*Id.* ¶¶ 1, 36–80); *see also Cooper v. Anheuser-Busch, LLC*, 553 F. Supp. 3d 83, 113–14 (S.D.N.Y. 2021) (“[A]t motion-to-dismiss stage, plaintiff can satisfy the ‘where and when’ requirement by specifying a general time frame, and need not allege ‘the specific date of every alleged misstatement.’” (quoting *Great W. Ins. Co. v. Graham*, No. 1:18-CV-6249 (VSB), 2020 WL 3415026, at \*24 (S.D.N.Y. Jun. 22, 2020))). Finally, the Complaint alleges that Defendant’s T&T

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<sup>7</sup> While “Rule 9(b) permits a plaintiff to allege scienter generally, . . . the Second Circuit has ‘repeatedly required plaintiffs to plead the factual basis which gives rise to a strong inference of fraudulent intent.’” *Barreto v. Westbrae Nat., Inc.*, 518 F. Supp. 3d 795, 808 (S.D.N.Y. 2021) (quoting *United States ex rel. Tessler v. City of New York*, 712 Fed. App’x 27, 29 (2d Cir. 2017) (summary order)). Here, scienter is not in dispute, as Defendant himself has previously admitted to fraudulently mismarking these very same positions to conceal his trading losses and obtain a bonus. (*See* Plea Tr., at 20:3–21:8.). And even if scienter was in dispute, the allegations in the Complaint give rise to a strong inference of fraud.

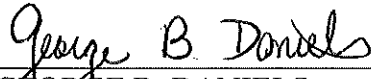
entries were fraudulent because they were not accurate reflections of the value of the gas division's trading book. (Compl. ¶¶ 43, 52, 55, 71, 76.) The Complaint therefore satisfies Rule 9(b)'s heightened pleading standard.

#### IV. CONCLUSION

Defendant's motion to dismiss, (ECF No. 45,) is DENIED. The Clerk of Court is directed to close the motion accordingly.

Dated: August 20, 2026  
New York, New York

SO ORDERED.

  
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GEORGE B. DANIELS  
United States District Judge