

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
)
)

Nathan Harris,)
)

Respondent.)
)
)

CFTC Docket No. 19-20

RECEIVED CFTC



Office of Proceedings
Proceedings Clerk

12:22 pm, Sep 09, 2019

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c), 6(d), AND 8a OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from January 2012 to August 2014 (“Relevant Period”), Nathan Harris (“Harris” or “Respondent”) violated Sections 4a(e) and 4b(a)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6a(e), 6b(a)(1) (2012), and Commission Regulation (“Regulation”) 166.2, 17 C.F.R. § 166.2 (2018). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c), 6(d), and 8a of the Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or, a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Harris, at the time an associated person (“AP”) of Kooima & Kaemingk Commodities, Inc. (“K&K”), engaged in unauthorized trading in violation of Section 4b(a)(1) of the Act, 7 U.S.C. § 6b(a)(1) (2012), and Regulation 166.2, 17 C.F.R. § 166.2 (2018). K&K and Harris used the term “Investment Accounts” internally and with customers to describe futures and options trading accounts that were managed by K&K APs, including Harris, for speculative investment. Despite the speculative nature of the trading Harris did not obtain specific authorization from certain customers for particular trades and did not obtain signed powers of attorneys from certain customers. During the Relevant Period, Harris managed a significant number of K&K customers’ Investment Accounts and caused approximately \$10.3 million in net customer losses as a result of his unauthorized trading.²

In August 2014, Harris’s unauthorized trading in a customer’s Investment Account exceeded CME Group (“CME”) position limits for the August 2014 live cattle futures contract in violation of Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2012).

In accepting the Offer, the Commission recognizes Harris’s cooperation during the Division of Enforcement’s investigation of this matter. Specifically, Harris provided timely, truthful, and material information that disclosed the existence of previously unknown violations of the Act and Regulations. The Commission notes that the cooperation by Harris is being recognized in the form of a reduced civil monetary penalty.

B. RESPONDENT

Respondent **Nathan Harris** is a resident of Akron, Iowa. Harris was registered with the Commission as an AP of K&K until August 14, 2014. Harris is currently registered as an AP of another introducing broker.

C. FACTS

1. **Harris Fraudulently Solicited Customers To Open Discretionary Trading Accounts by Misrepresenting the Safety and Profitability of Futures Trading and by Making Material Omissions.**

Around January 2012, K&K began soliciting and opening Investment Accounts on behalf of its customers. Between January 26, 2012 and June 20, 2012, K&K held three open houses in its office in which K&K gave presentations to customers and prospective customers concerning hedging and investment strategies for futures and options. During at least one of the three open-

² The Commission, in *In re Kooima & Kaemingk Commodities, Inc.*, CFTC No. 18-39, 2018 WL 4697025, at *18, *20 (Sept. 26, 2018) (consent order), ordered K&K and its principals, Lauren Kaemingk (“Kaemingk”) and Bradley Kooima (“Kooima”), to pay, jointly and severally, restitution to customers for K&K’s, Harris’s, and Kaemingk’s violations of the Act and Regulations. Because that restitution order has been satisfied, the Commission is not ordering Harris to pay restitution in this Order.

house presentations, K&K informed customers that K&K offered Investment Accounts. In the Investment Accounts, K&K managed the accounts for speculative purposes without obtaining specific authorization from customers for particular trades and without obtaining written powers of attorney from the customers.

Following these open houses, Harris fraudulently solicited a significant number of customers to open Investment Accounts by misrepresenting, among other things, K&K's profitable trading history on behalf of customers and that the Investment Accounts would be low risk. Harris's representations of past profitable trading in Investment Accounts could not be substantiated because K&K did not maintain specific records concerning profits or losses in Investment Accounts. Harris also omitted facts concerning customers that suffered significant losses in Investment Accounts and did not disclose that Harris and K&K had provided reimbursement for customers' losses.

2. Harris Engaged in Unauthorized Trading and Managed-Account Fraud in Customers' Investment Accounts.

As detailed in the specific examples below, during the Relevant Period, Harris did not obtain specific authorization from customers before executing trades in customers' Investment Accounts; he did not obtain written powers of attorneys from customers that had Investment Accounts; and, in some cases, he exceeded customers' oral authorization concerning the size and risk of positions that Harris placed in customer accounts.

Harris's most extensive unauthorized trading came to light in the spring of 2014, when he caused over \$7 million in losses in two customer accounts. Despite being told by K&K on multiple occasions in the spring that his unauthorized trading was too aggressive, Harris's unauthorized trading did not stop and continued through August 2014. In particular, Harris placed unauthorized trades in a number of customer accounts in June 2014 based on a news story that Harris believed would lead to a sharp downturn in live cattle futures. Due to the losses incurred as a result of Harris's trading in June 2014, at least one customer took out a mortgage on his farm to cover the losses.

In total, Harris's unauthorized trading in Investment Accounts resulted in at least twelve customers losing approximately \$10.3 million during the Relevant Period.

a. Harris Placed Unauthorized, Speculative Trades in an Account Controlled by a Cattle Feedlot Operator.

Between August 2013 and April 2014, Harris was responsible for accepting orders from Customer A, which operated a cattle feedlot. In connection with its feedlot operations, Customer A allowed its feedlot customers to hedge cattle being fed at Customer A by using Customer A's trading accounts opened through K&K.

Each of Customer A's feedlot customers was assigned a trading subaccount that was titled in Customer A's name. Customer A was responsible for making—and in fact made—all margin payments associated with its feedlot customers' trading activity. Any margin payments were made to Customer A's master account in a single payment, and all the subaccounts were margined on a net basis. When a feedlot customer sold physical cattle held with Customer A, the

feedlot customer's trading subaccount profit (or loss) would be added to (or subtracted from) the final distribution payment to the customer.

Feedlot customers were not permitted to place speculative trades through Customer A's trading accounts, and all trades were required to be approved by Customer A's manager, who would then place the trades through Harris at K&K. Between August 2013 and April 2014, Harris was also a feedlot customer—feeding approximately 200 cattle at Customer A. Harris would need only about six or seven live cattle futures contracts to hedge his cattle being fed at Customer A.

Despite the protocol in place for this customer, Harris managed the trading in Customer A's accounts without obtaining approval from Customer A's manager for transactions placed in Harris's subaccounts. Customer A did not provide Harris with a written power of attorney.

Between August 8, 2013 and April 29, 2014, Harris placed a substantial number of speculative trades in feedlot subaccounts that were assigned for hedging Harris's cattle. At its peak, Harris accumulated a short position of approximately 550 live cattle futures contracts in the subaccounts. Harris did not communicate these trades to Customer A's manager prior to placing the trades. Spreadsheets containing false information were created and distributed to Customer A. These spreadsheets allocated the margin amounts due for Harris's speculative trading among other feedlot subaccounts. Since Customer A only made a single margin payment that covered all of the subaccounts, Customer A relied on the information in these spreadsheets to monitor each subaccount's position; and, consequently, Customer A made large margin payments for Harris's unauthorized trades.

In March and April 2014, Customer A made margin payments of about \$800,000 to its master account, which was an unusually large amount for the feedlot. As a result, Customer A examined its trading records and discovered that Harris had placed unauthorized trades in Customer A's trading subaccounts. On or around April 29, 2014, Customer A informed K&K of Harris's misconduct. In total, Customer A suffered over \$700,000 in losses due to Harris's unauthorized trading.

b. Harris Caused Millions in Losses in Customer B's Account Through Thousands of Unauthorized Trades.

In April 2014, around the same time K&K discovered Harris's unauthorized trades in Customer A's accounts, Harris managed the trading in Customer B's account without obtaining specific authorization for transactions placed in the account and without obtaining a written power of attorney. Harris engaged in a spread-trading strategy for Customer B. An example of spread trading involves buying contracts in one expiration month and selling an equal amount of contracts in another expiration month. The profit or loss from spread trading is based on the narrowing or widening of the price difference between the two contracts rather than the rise or fall of either contract month alone. While trading Customer B's account without authorization, Harris accumulated thousands of spread positions—more than any customer account ever held at K&K.

On or around April 24, 2014, CME contacted K&K because Customer B's account exceeded CME position limits for the June 2014 live cattle futures contract—one leg of Customer B's spread position.³ After Harris learned of CME's inquiry, Harris had a conversation with Customer B in which Harris explained how Customer B should respond to questions about the trades if CME or the Commission contacted Customer B. Harris specifically instructed Customer B not to volunteer that Harris was directing the trading in the account without a power of attorney.

Upon learning of the scope of the trading in the account, Customer B instructed Harris to reduce the positions in the account in an orderly manner to minimize losses. Despite these instructions, Harris continued placing unauthorized trades in Customer B's account during May and June 2014. In June 2014, Customer B left the country for a few weeks and was only available to communicate with Harris intermittently. While Customer B was traveling, Harris continued trading the account without Customer B's authorization. In total, Customer B suffered over \$6.6 million in losses due to Harris's unauthorized trading.

c. Harris Placed Unauthorized Trades in Customers' Accounts After Reading a News Story that Harris Believed Would Lead to a Decline in Cattle Prices.

In June 2014, Harris placed unauthorized trades in multiple customer accounts after reading a news report. Harris began speculating in at least six Investment Accounts that the live cattle futures contract would decline based on the dissemination of this news report. For example, following the news report, Harris accumulated over sixty short October 2014 live cattle futures contracts in Customer C's account, all without Customer C's authorization. After the price of the October 2014 live cattle futures contract went up, the customer faced a six-figure margin call. To meet this margin call, Customer C had to mortgage his farm—ultimately using the mortgage to cover over \$170,000 in losses.

3. Harris's Unauthorized Trading Resulted in a Customer Exceeding Exchange Position Limits in Live Cattle.

Between February 2014 and August 2014, Harris placed unauthorized trades in Customer D's account. In August 2014, Harris's unauthorized trading caused Customer D's account to exceed CME position limits for the live cattle futures contract.

On June 13, 2014, a friend of Customer D informed Kaemingk that Harris was trading Customer D's account without authorization. During the conversation, Kaemingk said that Customer D's account is "on a list that has thrown up a bunch of red flags." Over the next few weeks, Harris discussed ways to recoup Customer D's losses through additional trading and through partial reimbursement of Customer D's losses. Harris paid Customer D at least \$50,000 to partially reimburse some of the losses, while K&K reimbursed Customer D \$125,000 on August 1, 2014. Harris's unauthorized trading in Customer D's account, however, did not stop.

Between August 6 and 8, 2014, Harris engaged in additional unauthorized trading of Customer D's account. Through Harris's trading on these days, Customer D's account accumulated 545 contracts in August 2014 live cattle, which exceeded CME's live cattle spot-

³ CME granted Customer B a Spread Exemption.

month limit of 450 contracts. No exemption from the position limit was available for Customer D's position.

On August 8, 2014, Customer D faced a margin call of over \$1 million. On August 11, 2014, Harris informed Kaemingk and Kooima that the trades were unauthorized and that Customer D was unwilling to pay for the losses in the account. That same day, Kooima liquidated the positions in Customer D's account, resulting in a deficit owed by the customer of approximately \$875,000. In total, Customer D suffered over \$1 million in losses due to Harris's unauthorized trading between February and August 2014. K&K reimbursed Customer D for these losses.

III. LEGAL DISCUSSION

A. In Trading the Investment Accounts, Harris Engaged in Fraudulent Conduct in Connection with Futures in Violation of Sections 4b(a)(1)(A) and (C) of the Act and Regulation 166.2.

Section 4b(a)(1)(A) and (C) of the Act makes it unlawful:

(1) 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; [or]

* * *

(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)(A), (C) (2012).

Regulation 166.2, 17 C.F.R. § 166.2 (2018), prohibits introducing brokers and their APs, among others, from effecting a transaction in commodity interests without specific authorization or without written authorization to trade without specific authorization.

1. Harris's Unauthorized Trading in Investment Accounts Violated Section 4b of the Act and Regulation 166.2.

Through his control of customer Investment Accounts, in which Harris managed customers' speculative trading accounts without obtaining specific authorization from customers for particular transactions and without obtaining written powers of attorneys from the customers, Harris violated Section 4b(a)(1)(A) and (C) of the Act and Regulation 166.2.

“[T]he knowing and deliberate execution of unauthorized trades, even if not done out of an evil motive or intent to injure the customer,” violates Section 4b of the Act and Regulation 166.2. *Cange v. Stolter & Co.*, 826 F.2d 581, 589 (7th Cir. 1987); *see also CFTC v. Morse*, 762 F.2d 60, 62 (8th Cir. 1985); *Ray E. Friedman & Co. v. Jenkins*, 738 F.2d 251, 253 n.4 (8th Cir. 1984). “It is enough that [respondent] acted deliberately, knowing that his acts were unauthorized and contrary to instructions.” *Haltmier v. CFTC*, 554 F.2d 556, 562 (2d Cir. 1977); *see also McIlroy v. Dittmer*, 732 F.2d 98, 101–02 (8th Cir. 1984); *Moll v. Heinold Commodities, Inc.*, No. 86C10249, 1989 WL 58205, at *4 (N.D. Ill. May 31, 1989) (denying summary judgment to defendant because there was a material dispute as to whether the failure to disclose that unauthorized trades could be removed from the account was a violation of Section 4b). Section 4b “can be violated simply by virtue of a [respondent’s] knowing unauthorized trading.” *Preswick Capital Mgmt. Ltd. v. Peregrine Fin. Grp.*, No. 10-C-23, 2010 WL 4684038, *3 (N.D. Ill. Nov. 12, 2010); *see also Ray E. Friedman & Co.*, 738 F.2d at 253 n.4.

Harris knowingly engaged in significant unauthorized trading through Investment Accounts. He managed the Investment Accounts in a discretionary manner without obtaining written powers of attorney from certain customers, did not obtain specific authorization from customers before placing orders for customers’ Investment Accounts, and exceeded certain customers’ instructions concerning the size and risk of positions.

2. Harris Made Material Misrepresentations and Omissions in Violation of Section 4b(a)(1)(A) and (C) of the Act.

Harris also violated Section 4b of the Act through misrepresentations and omissions, which requires that: (1) misrepresentations or omissions were made; (2) the misrepresentations or omissions were material; and (3) Respondent acted with scienter. *CFTC v. Kratville*, 796 F.3d 873, 887 n.8 & 891–92 (8th Cir. 2015) (citing *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328-29 (11th Cir. 2002)).

a. Harris Made Misrepresentations and Omissions.

“Whether a misrepresentation has been made depends on the overall message and the common understanding of the information conveyed.” *Kratville*, 796 F.3d at 892 (citation and quotations omitted). A statement is material if “a reasonable investor would consider it important in deciding whether to make an investment.” *Id.* at 895 (quoting *R.J. Fitzgerald*, 310 F.3d at 1328–29); *CFTC v. Commonwealth Fin. Grp.*, 874 F. Supp. 1345, 1353–54 (S.D. Fla. 1994) (noting that “past success and experience are material factors which a reasonable investor would consider when deciding to invest”). Any fact that enables customers to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. *In re Commodities Int’l Corp.*, CFTC No. 83-43, 1997 WL 11543, at *8-9 (Jan. 14, 1997) (finding that misrepresentations and omissions to customers were material and fraudulent because customers could not properly evaluate their circumstances with regard to risk of loss and opportunity for profit).

Harris misrepresented his profitable trading history on behalf of customers and misrepresented that the Investment Accounts would be low risk. Harris’s representations of past profitable trading in Investment Accounts could not be substantiated because K&K did not maintain specific records concerning profits or losses in Investment Accounts. At the same time,

Harris omitted facts concerning customers that suffered significant losses in Investment Accounts and did not disclose that Harris and K&K had provided reimbursement for customers' losses.

b. The Misrepresentations and Omissions Were Material.

Misrepresentations concerning the profitability of a customer's investment are generally deemed to be material and violative of the antifraud provisions of the Act. *See, e.g., Kratville*, 796 F.3d at 895; *R&W Tech. Servs. Ltd. v. CFTC*, 205 F.3d 165, 172-73 (5th Cir. 2000); *CFTC v. Carnegie Trading Grp.*, 450 F. Supp. 2d 788, 799 (N.D. Ohio 2006). "Indeed, misrepresentations concerning profit and risk go to the heart of a customer's investment decision and are therefore material as a matter of law." *CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 686 (D. Md. 2000), *aff'd in part, rev'd in part sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002).

The misrepresentations described above concerning past profitable trading experience and diminished risk in connection with soliciting and managing Investment Accounts constitute material misrepresentations because they go to the core of the customers' investment decisions. Harris also omitted facts concerning customers that suffered significant losses in Investment Accounts, including his failure to disclose that he and K&K reimbursed some customers for trading losses. These omissions were material because they would have disclosed his true trading history to customers.

c. Harris Acted with Scienter.

Harris made material misrepresentations and omitted material facts with the requisite scienter. Scienter requires proof that a respondent committed the alleged wrongful acts intentionally or if a respondent's "conduct represents an extreme departure from the standards of ordinary care." *Kratville*, 796 F.3d at 893; *see also CFTC v. Noble Metals Int'l, Inc.*, 67 F.3d 766, 774 (9th Cir. 1995); *Drexel Burnham Lambert Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988) (holding that recklessness is sufficient to satisfy scienter requirement). The scienter element is established when the conduct involves "highly unreasonable omissions or misrepresentations . . . that present a danger of misleading [customers] which is either known to the Defendant or so obvious that Defendant must have been aware of it." *Kratville*, 796 F.3d at 893 (alterations in original) (quoting *R.J. Fitzgerald*, 310 F.3d at 1328); *see also Wasnick v. Refco, Inc.*, 911 F.2d 345, 348 (9th Cir. 1990). The Commission must demonstrate only that a respondent's actions were "intentional as opposed to accidental." *Lawrence v. CFTC*, 759 F.2d 767, 773 (9th Cir. 1985).

Harris's conduct satisfies the scienter requirement. First, Harris represented he maintained a profitable track record in managing Investment Accounts, yet did not maintain any records supporting such representations while omitting facts related to the reimbursement of customers for losses in Investment Accounts. These misrepresentations were, at a minimum, made recklessly. Second, recorded telephone calls demonstrate that Harris knew the conduct was wrong when Harris had a conversation with a customer in which Harris explained how the customer should respond to questions about the discretionary nature of the customer's account, and that the customer should not volunteer that information, if someone from the Commission or CME contacted the customer about the trading activity in the account.

B. Harris's Trading of Customer D's Account Exceeded CME Position Limits in Live Cattle in Violation of Section 4a(e) of the Act.

Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2012), makes it unlawful for any person to exceed position limits set by a contract market for a futures contract. No proof of scienter is required to establish a violation of Section 4a(e) of the Act. *Saberi v. CFTC*, 488 F.3d 1207, 1212 n.4 (9th Cir. 2007).

CME is a registered entity as defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012), and a designated contract market for trading live cattle futures contracts pursuant to Section 5 of the Act, 7 U.S.C. § 7 (2012). CME Rules 10102.E and 559, in effect for the August 2014 live cattle futures contract, imposed a spot-month position limit of 450 contracts long or short, effective at the close of business on the first business day after the first Friday of the contract month, which in this case was the close of business on Monday, August 4, 2014.

Regulation 150.5(g), 17 C.F.R. § 150.5(g) (2018), provides for aggregation of certain positions in evaluating compliance with position limits established by a designated contract market such as CME:

[i]n determining whether any person has exceeded the limits established [by a designated contract market], all positions in accounts for which such person by power of attorney or otherwise directly or indirectly controls trading shall be included with the positions held by such person; such limits upon positions shall apply to positions held by two or more person[s] acting pursuant to an express or implied agreement or understanding, the same as if the positions were held by a single person.

The Commission has previously found position limit violations where a trader controls positions in another's account. See *In re McVean Trading & Invs., LLC*, CFTC No. 17-15, 2017 WL 2729956, at *12 (June 21, 2017) (consent order).

Harris controlled the trading in Customer D's trading account, which Harris treated as an Investment Account. As such, Harris directly or indirectly controlled the positions in Customer D's account within the meaning of Regulation 150.5(g). Those positions, therefore, are treated as Harris's positions for purposes of calculating position limits. Harris accumulated a position of 545 August 2014 live cattle futures contracts in Customer D's account on August 8, 2014. At the time, CME's spot-month position limit for the August 2014 live cattle futures contract was 450. The positions remained in the account until the following business day, when on August 11, 2014, Harris informed K&K that the trades were unauthorized and K&K was able to liquidate the positions. As a result, Harris violated Section 4a(e) of the Act.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Sections 4a(e) and 4b(a)(1) of the Act, 7 U.S.C. §§ 6a(e), 6b(a)(1) (2012), and Regulation 166.2, 17 C.F.R. § 166.2 (2018).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which he, without admitting or denying the findings and conclusions herein:

- A. Acknowledges service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. Any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012), and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this proceeding;
 - 7. Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201-53, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 - 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;

- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondent violated Sections 4a(e), 4b(a)(1) of the Act, 7 U.S.C. §§ 6a(e), 6b(a)(1) (2012), and Regulation 166.2, 17 C.F.R. § 166.2 (2018);
 2. Orders Respondent to cease and desist from violating Sections 4a(e) and 4b(a)(1) of the Act and Regulation 166.2;
 3. Orders Respondent to pay a civil monetary penalty in the amount of one million, two hundred fifty thousand dollars (\$1,250,000) within ten days of the date of the entry of the Order;
 4. Orders that Respondent be prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), for a period of eighteen months after the date of entry of this order and all registered entities shall refuse him trading privileges during that period;
 5. Permanently restricts Respondent's registration as an associated person by requiring Respondent, and any sponsoring firm, to comply with the undertakings consented to in the Offer and set forth below in Section VI.D.; and
 6. Orders Respondent to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Sections 4a(e) and 4b(a)(1) of the Act, 7 U.S.C. §§ 6a(e), 6b(a)(1) (2012), and Regulation 166.2, 17 C.F.R. § 166.2 (2018).
- B. Respondent shall pay a civil monetary penalty in the amount of one million two hundred fifty thousand (\$1,250,000) ("CMP Obligation"), within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

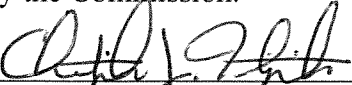
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondent and the name and docket number of this proceeding. The Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and to Charles Marvine, Commodity Futures Trading Commission, 4900 Main Street, Suite 500, Kansas City, MO 64112.

- C. Respondent is prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), for a period of eighteen months after the date of entry of this order and all registered entities shall refuse him trading privileges during that period;
- D. Respondent's registration as an associated person shall be restricted permanently (except as stated below in VI.D.4.) by requiring him, and any sponsoring firm, to comply with the undertakings set forth below:
 - 1. Respondent's business-related telephone calls must be recorded. All recordings must be maintained for a period of at least two years (unless otherwise required to be retained for five years pursuant to Regulation 1.31, 17 C.F.R. § 1.31 (2018));
 - 2. Respondent must file all promotional material with the sponsoring firm for approval prior to first use;
 - 3. Respondent's sponsoring firm must conduct quarterly on-site compliance reviews of Respondent's conduct; and
 - 4. For a period of two years from the date of entry of this Order, Respondent's sponsoring firm must implement procedures to—prior to the execution of any order for a commodity interest that Respondent solicits or accepts—independently verify with the customer (or person designated by the customer to control the account) the precise commodity interest to be purchased or sold and the exact amount of the commodity interest to be purchased or sold. Without limitation, a sponsoring firm may comply with this provision by having a registered person of the sponsoring firm, other than Respondent, be a concurrent participant on any communication in which a customer places an order for a commodity interest.

- E. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.
 2. Respondent agrees that he shall never, directly or indirectly, control or direct the trading for or on behalf of any other person or entity (other than an entity exclusively owned by Respondent, or an entity exclusively owned by Respondent and his immediate family), whether by power of attorney or otherwise, in any account involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018)).
- F. Cooperation: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action.
- G. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
- H. Change of Address/Phone: Until such time as Respondent satisfies in full his CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 9, 2019