

II. FINDINGS

The Commission finds the following:

A. SUMMARY

Classic is a voice broker that facilitates block trades between its customers in natural gas futures contracts and other products. Webb is Classic's founder and president, who also brokered block trades for Classic's customers.

Webb defrauded Classic's brokerage customers by executing block trades between a Classic customer and a proprietary trading account he owned and controlled, without disclosing to the customer that he was acting as a counterparty. Webb did this sixty-three times between April 30, 2014, and September 3, 2015. In those instances, Webb defrauded Classic's brokerage customers in two ways. First, Webb misappropriated material, nonpublic information from Classic's customers by trading on these customers' block trade orders, to which Webb had access, in violation of his duties to these customers. Second, Webb created the false impression for Classic's customers that he was acting as a broker, not a potential block trade counterparty, and led Classic's customers to think that the bids and offers he provided reflected bids or offers available from other market participants, when in fact those bids and offers reflected only the prices at which Webb was willing to execute a block trade in a proprietary trading account controlled by him. Through this fraudulent conduct, Webb realized over \$400,000 in trading profits in his proprietary trading account. Classic is vicariously liable for Webb's fraud.

Classic also failed to retain audio recordings of block trades executed by its brokers over the phone, as required by Regulations 1.31(b)(2) and 1.35(a)(1)(iii), 17 C.F.R. §§ 1.31(b)(2), 1.35(a)(1)(iii) (2019), for the period of August 2014 through August 13, 2015. Classic outsourced the preparation and retention of these audio recordings to a third-party service provider. Sometime between May and August 2015, this third-party service provider encountered technical issues that resulted in the loss of all audio recordings of block trades executed over the phone before August 13, 2015, including many of the block trades that Webb executed with Classic's brokerage customers. Classic did not discover these technical issues until August 2015.

Classic and Webb failed to supervise Classic's employees and agents in two respects. First, Classic and Webb had inadequate policies and procedures in place to ensure that its brokers did not execute block trades with Classic's brokerage customers in violation of Regulation 155.4, 17 C.F.R. § 155.4 (2019), and did not misappropriate or otherwise disclose the material, nonpublic information of Classic's customers. Second, Classic and Webb failed to ensure diligent oversight over the third-party service provider to whom Classic delegated its recordkeeping obligations and thus did not detect the technical failures that resulted in the loss of audio recordings in time to mitigate this loss.

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. Respondents do 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.

B. RESPONDENTS

Classic Energy LLC is a registered introducing broker headquartered in Houston, Texas. Among other services, Classic brokers block trades for customers in energy futures and other products listed on ICE Futures, U.S. (“ICE”) and other designated contract markets.

Mathew D. Webb is the founder, president, sole member, and was a registered associated person of Classic Energy. Webb brokered block trades in futures listed on ICE for Classic customers. Webb was also the sole member of MDW Capital, LLC (“MDW”), a proprietary trading company that engaged in block trades in the same energy futures contracts brokered by Classic.

C. FACTS

1. Classic’s Block Trade Brokerage Business

Classic facilitates block trades for its brokerage customers in natural gas futures contracts and other products, including natural gas futures listed on ICE such as the Henry LD1 Fixed Price Future (“H Contract”) and the Dominion South Basis Future (“DOM Contract”). Block trades are privately negotiated transactions involving exchange-listed futures contracts that meet the minimum quantity threshold determined by the exchange. Block trades are executed non-competitively away from the exchange’s order book, but are submitted for clearing to the exchange’s clearing house.

Classic is a “voice broker” that solicits and receives requests from its customers to enter into block trades via phone or instant message (“IM”). Classic then locates potential counterparties for the requested block trades either from among Classic’s other customers or the customers of another voice broker. Classic’s customers consider their block trade requests and other information they provide to voice brokers regarding their trading intentions to be confidential and nonpublic, and provide this information to Classic brokers with the expectation that Classic brokers will only use that information to locate potential block trade counterparties. When locating potential counterparties for requested block trades, Classic brokers necessarily disclose to other market participants the existence of a potential buyer or seller of a particular contract, as well as price and quantity information, but they do not disclose the identity of the customer making the block trade request. Classic is paid a commission for each block trade it executes on behalf of its customers.

Classic and its customers understood and agreed that Classic acted as an agent of its customers with authority to bind them in transactions involving natural gas futures and other products, including block trades in natural gas futures contracts listed on ICE. Classic’s written agreements with its customers explicitly required that Classic keep confidential its customers’ confidential and proprietary information. These written agreements also expressly stated that Classic could not act as a principal to any transactions involving natural gas futures or other products for which Classic provides brokerage services.

2. Webb Misappropriated Confidential Customer Information and Defrauded His Brokerage Customers by Taking the Other Side of His Customer's Block Trades

Between April 30, 2014, and September 3, 2015, Webb, acting as an affiliated person of Classic, received block trade requests from Classic's customers for natural gas futures contracts, including the H Contract and the DOM contract. During this period, Webb also maintained a proprietary trading account in the name of MDW, a limited-liability company he wholly owned and controlled. In the MDW account, Webb traded the same natural gas futures contracts for which he was brokering block trades for Classic's customers.

On sixty-three instances between April 30, 2014, and September 3, 2015, Webb received requests from Classic's customers for block trades in the H or DOM contract. Instead of locating a counterparty from among Classic's other customers or the customers of another voice broker, as his customers expected, Webb executed a block trade between the customer and the MDW account, knowing that the MDW account was taking the other side of the customer's block trade. Webb never disclosed to Classic's customers, either at the time the block trade was executed or at any other time, that he was taking the other side of their requested block trade in the MDW account.

By executing block trades between the MDW account and Classic's customers in this manner, Webb defrauded these customers in two ways. First, Webb misappropriated material, nonpublic information from Classic customers by trading on the customers' block trade orders in violation of his duties to the customers. Second, Webb created the false impression that he was acting as a broker, not a potential block trade counterparty, and led Classic's customers to think that the bids and offers he provided reflected bids or offers available from other market participants, when in fact those bids and offers reflected only the prices at which Webb was willing to execute a block trade in the MDW account. Webb reinforced this false impression by charging his customers brokerage commissions on each of the sixty-three block trades between his customers and the MDW account, just as he did for trades he brokered between his customers and other market participants.

Through this fraudulent scheme, Webb was able to obtain for the MDW account block trade prices that otherwise may not have been available if Webb were openly participating as a trader in the block trade market. Indeed, Webb realized trading profits for the MDW account by offsetting the block trade positions he established with Classic's customers with either other block trades or trades executed on ICE's electronic trading platform. On some occasions Webb executed these offsetting trades himself. On other occasions, another trader employed by MDW but who was located on Classic's brokerage floor executed the offsetting block trades or electronic trades. Between April 30, 2014, and September 3, 2014, Webb realized in the MDW account trading profits of \$413,065 on the sixty-three block trades he executed with Classic's customers.

3. Classic Failed To Maintain Records of Block Trades

Classic used a third-party service provider to record and maintain oral communications relating to block trades brokered by Classic and to comply with its recordkeeping obligations

under Section 4g of the Act, 7 U.S.C. § 6g (2012), and Regulations 1.31(b)(2) and 1.35(a)(1)(iii). Sometime between May 2015 and August 2015, this third-party service provider encountered technical issues that resulted in (1) the loss of all existing audio recordings of block trade communications and (2) the failure of the system to make audio recordings of any new block trade communications. Classic's compliance officer did not discover these problems until sometime in August 2015, in the course of responding to an audit conducted by ICE. As a result, Classic did not have audio recordings for block trade communications for any block trades brokered by Classic before August 13, 2015, including audio recordings for the block trades that Webb executed with Classic's brokerage customers by phone.

4. Classic and Webb Failed To Supervise

As a registered introducing broker, Classic was obligated under Regulation 166.3, 17 C.F.R. § 166.3 (2019), to diligently supervise the handling of all commodity interest accounts introduced by Classic and all other activities of its partners, officers, employees, and agents. As an associated person ("AP") of Classic with supervisory duties, Webb also had a duty to diligently supervise. From at least April 30, 2014, through September 3, 2015, Classic and Webb failed to ensure that Classic had an adequate system of oversight in place to detect or prevent its brokers or other affiliated persons from either taking the other side of customer block trades in violation of Regulation 155.4, or misappropriating material, nonpublic information from Classic's customers. For example, Classic did not have an adequate compliance manual or other written policies that set forth for its employees standards of conduct, relevant Commission or exchange rules, and prohibited brokerage and trading practices. Classic also did not have any procedures in place to monitor or review the activities of Classic's brokers. Although Classic had a compliance officer, and this compliance officer was generally aware that Webb was trading for the MDW account while also brokering block trades for Classic's customers, this compliance officer never reviewed any of Webb's brokerage or trading activity or took any other steps to determine whether Webb was trading in the MDW account in violation of his duties to Classic's customers.

In addition, Classic and Webb also allowed an independent trader, who traded solely on behalf of MDW, to sit on Classic's brokerage floor within earshot of many Classic brokers. From this location, this trader had access to block trade requests and other material, nonpublic information provided by Classic's customers to Classic brokers, and the ability to trade on this information in the MDW account. Classic and Webb did not put in place any safeguards to prevent Classic's brokers from intentionally or unintentionally disclosing their customers' material, nonpublic information to this trader.

Classic delegated its recordkeeping obligations under Section 4g of the Act and Regulations 1.31(b)(2) and 1.35(a)(1)(iii) to a third-party service provider. Classic and Webb failed to ensure that this third-party service provider was adequately supervised and was fulfilling Classic's recordkeeping obligations. Classic did not have an adequate compliance manual or any other policies or procedures that set forth any guidelines or practices for the preparation and retention of audio recordings. Classic and Webb delegated to Classic's compliance officer responsibility for the preparation and maintenance of audio recordings and oversight of the third-party service provider responsible for doing so. Between May 2015 through August 2015, Classic's compliance officer did not conduct checks of the third-party

service provider's systems sufficient to determine that audio recordings of block trade communications were not being prepared and retained until after the issue was discovered in August 2015, in response to an exchange inquiry. Consequently, Classic's compliance officer was not able to mitigate the third-party service provider's loss of recordings. As a result, Classic could not produce the audio recordings of block trade communications requested by ICE in the course of its audit.

III. LEGAL DISCUSSION

A. **Webb's Fraudulent Scheme and Misappropriation of Material, Nonpublic Information Violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3)**

Under Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2019), it is unlawful for any person, directly or indirectly to intentionally or recklessly: (1) use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; . . . or (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.

Trading on material, nonpublic information in breach of a pre-existing duty may violate Section 6(c)(1) and Regulation 180.1. As the Commission has expressly stated, “[d]epending on the facts and circumstances, a person who engages in deceptive or manipulative conduct 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, *for example by trading on the basis of material nonpublic information in breach of a pre-existing duty* (established by another law or rule, or agreement, understanding, or some other source), *or by trading on the basis of material nonpublic information that was obtained through fraud or deception*, may be in violation of final Rule 180.1.” Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 Fed. Reg. 41,398, 41,403 (emphasis added); *see, e.g., In re Jon P. Ruggles*, CFTC No. 16-34, 2016 WL 5682206 (Sept. 29, 2016) (consent order) (finding that trader violated Section 6(c)(1) and Regulation 180.1 by using his knowledge and access to employer's trading strategies to match trades with a personal trading account); *In re Motazed*, CFTC No. 16-02, 2016 WL 7880066 (Dec. 2, 2015) (consent order) (finding that trader violated Section 6(c)(1) and Regulation 180.1 by using employer's trading information to trade for his own benefit); *United States v. O'Hagan*, 521 U.S. 642, 652 (1997) (holding that a person violates SEC Rule 10b-5 by misappropriating confidential information for securities trading purposes in breach of a duty owed to the source of the information).

The undisclosed trading on the basis of material, nonpublic information in breach of a duty defrauds the source of the exclusive use of the information. *Motazed*, 2016 WL 7880066 *5 (citing *O'Hagan*, 521 U.S. at 652); *see O'Hagan*, 521 U.S. at 652 (“Under th[e] misappropriation theory, a fiduciary's undisclosed, self-serving use of a principal's information to purchase or sell securities, in breach of a duty of loyalty and confidentiality, defrauds the

principal of the exclusive use of that information.”)² Such trading deceives not only the source of the information but harms the integrity of the markets and the investing public. *O’Hagan*, 521 U.S. at 652–53, 658.

On sixty-three occasions between April 30, 2014, and September 3, 2015, by receiving block trade requests from Classic’s customers and then taking the other side of the customer’s block trade in his own trading account, Webb intentionally or recklessly misappropriated material nonpublic information from Classic’s customers for his own benefit in violation of the duties he owed to these customers. Webb owed duties to his customers as an affiliated person of an introducing broker under Regulation 155.4, 17 C.F.R. § 155.4 (2019), set forth below and which he also violated, under the brokerage agreements between Classic and its customers, and as an agent of these customers for the purposes of facilitating block trades. Consequently, Webb violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3).

In addition, Webb violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3) when he created the false impression for Classic’s customers that he was acting as a broker, not a potential block trade counterparty, and led Classic’s customers to think that the bids and offers he provided reflected bids or offers available from other market participants, when in fact those bids and offers reflected only the prices at which Webb was willing to execute a block trade in a proprietary trading account controlled by him. By doing so, Webb engaged in a scheme and artifice to defraud and a course of conduct that operated as a fraud on Classic’s customers. *See CFTC v. S. Trust Metals, Inc.*, 894 F.3d 1313, 1326 (11th Cir. 2018) (holding that defendant violated Regulation 180.1 when it “misrepresented to customers the fundamental nature of their investments”); *cf. SEC v. Dorozhko*, 574 F.3d 42, 51 (2d Cir. 2009) (holding that “misrepresenting one’s identity in order to gain access to information that is otherwise off limits” is deceptive conduct under Section 10(b)(5) of the Securities Exchange Act of 1934 and SEC Rule 10b-5).

B. Regulation 155.4(b)(2)(i)—Trading Standards for Introducing Brokers

Regulation 155.4(b)(2)(i) expressly provides that no introducing broker or any of its affiliated persons shall:

knowingly take, directly or indirectly, the other side of any order of another person revealed to the introducing broker or any of its affiliated persons by reason of their relationship to such other person, except with such other person’s prior consent and in conformity with contract market rules approved by or certified to the Commission.

² As the Supreme Court observed in *O’Hagan*, “misappropriators . . . deal in deception. A fiduciary who ‘[pretends] loyalty to the principal while secretly converting the principal’s information for personal gain’ ‘dupes’ or defrauds the principal. The undisclosed misappropriation of such information, in violation of a fiduciary duty, . . . constitutes fraud akin to embezzlement.” 521 U.S. at 653–54. Consequently, the Court held that “misappropriation, as just defined, satisfies [the Securities Exchange Act of 1934] § 10(b)’s requirement that chargeable conduct involve a “deceptive device or contrivance” used “in connection with” the purchase or sale of securities. *Id.* at 653.

On sixty-three occasions between April 30, 2014, and September 3, 2015, Webb, acting as an affiliated person of Classic, a registered introducing broker, received block trade orders that Classic's customers disclosed to Webb for the purpose of executing block trades with other market participants. By taking the other side of these block trades with Classic's customers without first obtaining prior consent from these customers, Webb violated Regulation 155.4(b)(2)(i).

C. Section 4g and Regulations 1.31 and 1.35(a)(1)(iii)—Recordkeeping

Section 4g of the Act, 7 U.S.C. § 6g (2012), requires introducing brokers to maintain books and records pertaining to certain "transactions and positions in such form and manner and for such period as may be required by the Commission." Regulations 1.31(b)(2) and 1.35(a)(1)(iii), 17 C.F.R. §§ 1.31(b)(2), 1.35(a)(1)(iii) (2019), further elaborate this requirement. Regulation 1.35(a)(1)(iii) requires certain registered introducing brokers, including Classic, to keep all oral and written communications that lead to the execution of a block trade involving futures contracts. Regulation 1.31(b)(2) requires introducing brokers, that are required to keep oral communications, to retain such oral communications for one year from the date of the communication.

A violation of these record-keeping regulations does not require scienter. *In re GNP Commodities*, CFTC No. 89-1, 1992 WL 201158, at *15 (Aug. 11, 1992); *see also In re DiPlacido*, CFTC No. 01-23, 2008 WL 4831204, at *37 (Nov. 5, 2008); *In re Buckwalter*, CFTC No. 80-28, 1991 WL 83522, at *26-27 (Jan. 25, 1991).

Classic violated Section 4g and Regulations 1.31(b)(2) and 1.35(a)(1)(iii) for the period of August 2014 through August 13, 2015, by failing to keep and retain audio recordings that contained oral communications that led to the execution of block trades involving futures contracts.

D. Regulation 166.3—Failure To Supervise

Regulation 166.3 states:

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

17 C.F.R. § 166.3 (2019). A violation under Regulation 166.3 is an independent violation for which no underlying violation is necessary. *See In re Collins*, CFTC No. 94-13, 1997 WL 761927, at *10 (Dec. 10, 1997).

A violation of Regulation 166.3 is demonstrated by showing either that: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In re Murlas Commodities, Inc.*, CFTC No. 85-29, 1995 WL

523563, at *9 (Sept. 1, 1995); *Sansom Refining Co. v. Drexel Burnham Lambert, Inc.*, CFTC No. 82-R448, 1990 WL 282783, at *11 (Feb. 16, 1990) (noting that, under Regulation 166.3, an FCM has a “duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents” (internal quotation omitted)); *In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at *17–19 (Aug. 11, 1992) (providing that, even if an adequate supervisory system is in place, Regulation 166.3 can still be violated if the supervisory system is not diligently administered). Evidence of violations that “should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly” is probative of a failure to supervise. *In re Paragon Futures Assoc.*, CFTC No. 88-18, 1992 WL 74261, at *14 (Apr. 1, 1992).

From April 30, 2014, through September 3, 2015, Classic was a registered introducing broker and Webb, as Classic’s president, had supervisory duties at Classic. Classic and Webb, as a supervisory AP, violated Regulation 166.3 because Classic had no adequate system of oversight in place over and did not diligently supervise Webb’s (or any other Classic employee’s) activity sufficient to detect or prevent misappropriation of material, nonpublic information from Classic’s customers or conduct that violated the trading standards for introducing brokers set forth in Regulation 155.4(b)(2)(i). Specifically, (1) Classic and Webb failed to ensure that Classic established any written policies or procedures that set forth for Classic’s employees standards of conduct or prohibited trading or brokerage practices; (2) neither Classic’s compliance officer nor anyone else at Classic adequately reviewed or monitored the brokerage activity of Webb and other Classic employees and thus were not in a position to detect instances in which Webb executed block trades with Classic’s customers; and (3) Classic and Webb allowed an independent trader to sit on Classic’s trading floor where he had access to material, nonpublic information of Classic’s customers, without instituting any procedures to guard against disclosure of such information to this trader.

Classic and Webb also violated 166.3 because they did not diligently supervise the preparation and retention of audio recordings of communications that led to the execution of block trades. Between May 2015 and August 2015, Classic and Webb failed to ensure adequate oversight over the third-party service provider responsible for the preparation and retention of these audio recordings. Specifically, Classic’s compliance officer, who was responsible for ensuring Classic’s compliance with Regulations 1.31(b)(2), and 1.35(a)(1)(iii), failed to take sufficient steps up until August 2015 to determine whether the third-party service provider was actually preparing and retaining audio recordings, and as a result was not able to mitigate the third-party service provider’s loss of recordings.

E. Vicarious Liability

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2019), provide that the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust. Pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g., Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988).

In order to establish liability under Section 2(a)(1)(B) of the Act and Regulation 1.2, the Commission must show that (1) Webb was acting as Classic's agent when he engaged in the misconduct above, and (2) that Webb's actions were within the scope of his employment or office. *Guttman v. CFTC*, 197 F.3d 33, 39 (2d Cir. 1999). Classic need not have participated in Webb's conduct or controlled it for the purpose of imposing liability, so long as he was "acting for" Classic at the time. *Id.*

Webb's duties included receiving and brokering block trade orders from Classic's customers, including those whose material, non-public information he misappropriated. Webb's misconduct, therefore, was both "for" Classic and within the scope of his agency with Classic. *Id.*³ Accordingly, Classic is liable for Webb's violations of Section 6(c)(1) of the Act and Regulations 155.4(b)(2)(i), 166.3, and 180.1(a)(1) and (3) pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2.

F. Control Person Liability

Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), provides that "[a]ny person who, directly or indirectly, controls any person who has violated any provision of this chapter or any of the rules, regulations, or orders issued pursuant to this chapter may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person." The "fundamental purpose" of the statute is "to reach behind the corporate entity to the controlling individuals of the corporation and to impose liability for violations of the Act directly on such individuals as well as the corporation itself." *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1334 (11th Cir. 2002) (citing *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1567 (11th Cir. 1995)). To establish liability, the Commission must show "that the defendant exercised general control over the operation of the entity principally liable and possessed the power or ability to control the specific transaction or activity upon which the primary violation was predicated, even if such power was not exercised." *CFTC v. Int'l Fin. Servs., Inc.*, 323 F. Supp. 2d 482, 504 (S.D.N.Y. 2004) (quoting *CFTC v. Baragosh*, 278 F.3d 319, 330 (4th Cir. 2002)). Control is "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise." *In re Spiegel*, CFTC No. 85-19, 1988 WL 232212, at *4 n.4 (Jan. 12, 1988). "Section 13[(b)], therefore, is about power, and imposing liability for those who fail to exercise it to prevent illegal conduct." *R.J. Fitzgerald*, 310 F.3d at 1334.

A controlling person is liable for the controlled person's violations if that controlling person "did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation." Section 13(b) of the Act. Proof of recklessness will demonstrate that the controlling person acted in bad faith, although negligence alone is insufficient. *Monieson v. CFTC*, 996 F.2d 852, 860 (7th Cir. 1993) (finding FCM's chairman of the board liable as controlling person because he failed to enforce supervision system with reasonable diligence, including failing to act in response to repeated charges of illegal behavior from different sources). "Knowing inducement" requires a showing that "the controlling person had actual or

³ Webb's misappropriation of material, non-public information in connection with the block trades, while benefitting him personally, also benefited Classic, by, among other things, earning Classic commissions from the customers' trades.

constructive knowledge of the core activities that constitute the violation at issue and allowed them to continue.” *In re Spiegel*, 1988 WL 232212, at *7 (footnote omitted).

From at least April 30, 2014, through September 3, 2015, Webb controlled Classic, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Classic’s acts in violation of the Act and Regulations; therefore, under Section 13(b) of the Act, Webb is liable for Classic’s violations of Section 6(c)(1) of the Act and Regulations 155.4(b)(2)(i), 166.3, and 180.1(a)(1) and (3).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that from at least April 30, 2014, through September 3, 2015, Classic and Webb violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulations 155.4(b)(2)(i), 166.3, and 180.1(a)(1) and (3), 17 C.F.R. §§ 155.4(b)(2)(i), 166.3, and 180.1(a)(1), (3) (2019). In addition, for the period of August 2014 through August 13, 2015, Classic violated Section 4g(a), 7 U.S.C. § 6g(a) (2012) and Regulations 1.31(b)(2) and 1.35(a)(1)(iii), 17 U.S.C. §§ 1.31(b)(2), 1.35(a)(1)(iii) (2019).

V. OFFER OF SETTLEMENT

Classic and Webb have submitted an Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission to all the 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. Waive:
 - 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 they 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 Commission’s Regulations, 17 C.F.R. pt. 148 (2019), relating to, or arising from, this proceeding;

7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 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 upon 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. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Classic and Webb have consented (in the Offer) to the Commission making in this order; and
- E. Consent, solely on the basis of the Offer, to the Commission’s entry of this Order, which in turn:
1. Makes findings by the Commission that Classic and Webb violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulations 155.4(b)(2)(i), 166.3, and 180.1(a)(1) and (3), 17 C.F.R. §§ 155.4(b)(2)(i); 166.3; 180.1(a)(1), (3) (2019); that Classic violated Section 4g(a), 7 U.S.C. § 6g(a) (2012) and Regulations 1.31(b)(2) and 1.35(a)(1)(iii), 17 C.F.R. §§ 1.31(b)(2), 1.35(a)(1)(iii) (2019); and that Webb is liable for Classic’s violation of Section 6(c)(1) of the Act and Regulations 155.4(b)(2)(i), 166.3, and 180.1(a)(1) and (3) pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012);
 2. Orders Classic and Webb to cease and desist from violating Section 6(c)(1) of the Act and Regulations 155.4(b)(2)(i), 166.3, and 180.1(a)(1) and (3); and Classic to cease and desist from violating Section 4g(a) of the Act and Regulations 1.31(b)(2) and 1.35(a)(1)(iii).
 3. Orders Classic and Webb to pay, jointly and severally, a civil monetary penalty in the amount of one million five hundred thousand dollars (\$1,500,000), plus post-judgment interest, within ten days of the date of the entry of this Order;
 4. Orders that Webb 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)), until January 3, 2022, and all registered entities shall refuse him trading privileges during that period; and
 5. Orders Classic and Webb to comply with the conditions, undertakings, and representations consented to in the Offer and set forth in Part VI of this Order, including the undertaking that Webb pay disgorgement in the amount of \$413,065 (less any disgorgement Webb has already paid to ICE in connection with the settlement between ICE and Webb announced on December 14, 2016), plus post-judgment interest, according to the terms set forth below.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Classic and Webb shall cease and desist from violating Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012) and Regulations 155.4(b)(2)(i), 166.3, and 180.1(a)(1) and (3), 17 C.F.R. §§ 155.4(b)(2)(i); 166.3; 180.1(a)(1), (3) (2019); and Classic shall cease and desist from violating Section 4g(a) of the Act, 7 U.S.C. § 6g(a) (2012) and Regulations 1.31(b)(2) and 1.35(a)(1)(iii), 17 C.F.R. §§ 1.31(b)(2), 1.35(a)(1)(iii) (2019).
- B. Classic and Webb shall, jointly and severally, pay a civil monetary penalty in the amount of \$1,500,000 (the “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 (2012).

Classic and Webb 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

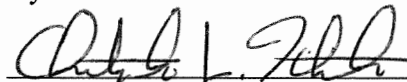
If payment is to be made by electronic funds transfer, Respondents shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondents and the name and docket number of this proceeding. Respondents 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.

- C. Webb 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)), until January 3, 2022, and all registered entities shall refuse him trading privileges during that period; and
- D. Classic and Webb shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondents agree that neither they nor any of their successors, assigns, agents or employees under their 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 Respondents' (i) testimonial obligations, or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
 2. Webb agrees that he shall not, directly or indirectly, until January 3, 2022:
 - a. enter into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. §1.3 (2019)), for Webb's own personal account or for any account in which Webb has a direct or indirect interest;
 - b. have any commodity interests traded on Webb's behalf;
 - c. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
 - d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
 - e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2019); and/or
 - f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)) (for any person other than Classic), or as an agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)), registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9).

3. Disgorgement: Webb agrees to pay disgorgement in the amount of \$413,065 (the "Disgorgement Obligation"), plus post-judgment interest, which consists of ill-gotten trading profits Webb generated in his proprietary trading account through the fraudulent conduct described above. However, the Disgorgement Obligation shall be reduced by any amount Webb has actually paid to ICE under the settlement agreement between ICE and Webb announced on December 14, 2016. Webb shall pay the Disgorgement Obligation in the manner specified in Part VI.B of this Order.
4. Cooperation, in General: Classic and Webb 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.
5. Partial Satisfaction: Classic and Webb understand and agree that any acceptance by the Commission of any partial payment of the Disgorgement Obligation or CMP Obligation shall not be deemed a waiver of their 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.
6. Change of Address/Phone: Until such time as Webb satisfies in full his Disgorgement Obligation and Classic and/or Webb satisfy in full their CMP Obligation as set forth in this Order, Classic and Webb 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 on this date.

By the Commission



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

Dated: September 30, 2019