

## MAGISTRATE JUDGE HARJANI

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

PROPEX DERIVATIVES PTY LTD,  
Defendant.

CASE NUMBER:

20CR0039

**DEFERRED PROSECUTION AGREEMENT**

Defendant Propex Derivatives Pty Ltd (the "Company"), pursuant to authority granted by the Company's members reflected in Attachment B, and the United States Department of Justice, Criminal Division, Fraud Section (the "Fraud Section"), enter into this deferred prosecution agreement (the "Agreement").

**Criminal Information and Acceptance of Responsibility**

1. The Company acknowledges and agrees that the Fraud Section will file the attached one-count criminal Information in the United States District Court for the Northern District of Illinois charging the Company with spoofing, in violation of Title 7, United States Code, Sections 6c(a)(5)(C) and 13(a)(2). In so doing, the Company: (a) knowingly waives its right to indictment on this charge, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); and (b) knowingly waives any objection with respect to venue to any charges by the United States arising out of the conduct described in the Statement of Facts attached hereto as Attachment A and consents to the filing of the Information, as provided under the terms of this Agreement, in the United States District Court for the Northern District of Illinois. The Fraud Section agrees to defer prosecution of the Company pursuant to the terms and conditions described below.

2. The Company admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, members, employees, and agents as charged in the Information, and as set forth in the attached Statement of Facts, and that the allegations described in the Information and the facts described in the attached Statement of Facts are true and accurate. Should the Fraud Section pursue the prosecution that is deferred by this Agreement, the Company stipulates to the admissibility of the attached Statement of Facts in any proceeding, including any trial, guilty plea, or sentencing proceeding, and will not contradict anything in the attached Statement of Facts at any such proceeding.

**Term of the Agreement**

3. This Agreement is effective for a period beginning on the date on which the Information is filed and ending three years from that date (the "Term"). The Company agrees, however, that, in the event the Fraud Section determines, in its sole discretion, that the Company has knowingly violated any provision of this Agreement or has failed to completely perform or fulfill each of the Company's obligations under this Agreement, an extension or extensions of the Term may be imposed by the Fraud Section, in its sole discretion, for up to a total additional time period of one year, without prejudice to the right of the Fraud Section to proceed as provided in Paragraphs 24-28 below. Any extension of the Agreement extends all terms of this Agreement, including the terms of the reporting requirement in Attachment D, for an equivalent period. Conversely, in the event the Fraud Section finds, in its sole discretion, that there exists a change in circumstances sufficient to eliminate the need for the reporting requirement in Attachment D, and that the other provisions of this Agreement have been satisfied, the Agreement may be terminated early.

### Relevant Considerations

4. The Fraud Section enters into this Agreement based on the individual facts and circumstances presented by this case and the Company, including:

a. the Company did not receive voluntary disclosure credit because it did not voluntarily and timely disclose to the Fraud Section the conduct described in the Statement of Facts attached hereto as Attachment A to this Agreement (“Statement of Facts”);

b. the Company received credit for its cooperation with the Fraud Section’s investigation, including voluntarily making a foreign-based employee available for an interview, producing documents to the Fraud Section located in a foreign country, and collecting and producing voluminous evidence and information to the Fraud Section;

c. the Company provided to the Fraud Section all relevant facts known to it, including information about the individuals involved in the conduct described in the attached Statement of Facts;

d. the nature and seriousness of the offense conduct, which involved thousands of instances of unlawful trading activity by a former trader at the Company, Jiongsheng (“Jim”) Zhao, between July 2012 and March 2016;

i. additionally, in May 2014, the Company’s clearing firm flagged certain trading activity by Zhao on the Chicago Mercantile Exchange (“CME”) and an Australian exchange as having triggered the clearing firm’s alerts for potential spoofing. The Company’s senior management met with the clearing firm to discuss Zhao’s trading activity as well as the Company’s planned remediation, which included certain changes to the Company’s compliance and trade surveillance programs. Despite those changes, however, the Company failed to identify

spoofing activity on the CME by Zhao during the time period from May 2014 to March 2016;

ii. further, in March 2016, the CME began an investigation into Zhao's trading activity in connection with E-mini S&P 500 futures contracts, including into potential spoofing by Zhao when he placed certain large orders. As part of that investigation, Zhao submitted to an interview with the CME, and provided written responses, to explain his trading activity. During Zhao's interview with the CME, and in certain written responses, Zhao made false and misleading statements to the CME regarding the large orders that were material to the CME's investigation into Zhao's trading activity;

e. the Company engaged in certain remedial measures by enhancing its compliance program and controls to ensure they were designed to detect and deter spoofing, commodities fraud, and other types of market manipulation. Among other things, in March 2018, the Company engaged an independent compliance consulting firm to conduct an assessment of the adequacy and effectiveness of the Company's compliance program, including on-site interviews of relevant personnel, reviews of written policies, and reviews of additional controls and processes. Following that review, the Company undertook a significant enhancement of its compliance program and internal controls, including:

i. revising the Company's compliance program and internal controls, including revisions and updates to its compliance policy in response to the independent compliance consulting firm's review;

- ii. contracting with a third-party vendor to provide automated trade surveillance, including surveillance for manipulative and deceptive trading such as spoofing and as part of this surveillance program alerts must be cleared by senior management; and
- iii. increasing the resources dedicated to compliance;
- f. the Company has enhanced and has committed to continuing to enhance its compliance program and internal controls, including ensuring that its compliance program satisfies the minimum elements set forth in Attachment C to this Agreement (“Corporate Compliance Program”);
- g. based on the Company’s remediation and the current state of its compliance program, and the Company’s agreement to report to the Fraud Section as set forth in Attachment D to this Agreement (“Corporate Compliance Reporting”), the Fraud Section determined that an independent compliance monitor was unnecessary;
- h. the Company has no prior criminal history;
- i. the Company has agreed to continue to cooperate with the Fraud Section as set forth in Paragraph 5, below; and
- j. the Company has resolved with the United States Commodity Futures Trading Commission (“CFTC”) through a proceeding pursuant to Section 6(c) and (d) of the Commodity Exchange Act, relating to the conduct described in the Statement of Facts.

**Future Cooperation and Disclosure Requirements**

5. The Company shall cooperate fully with the Fraud Section in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other conduct related to violations of the Commodity Exchange Act, Title 7, United States Code, Section 1, *et seq.*, and the commodities fraud statute, Title 18, United States Code, Section 1348

(collectively and hereafter, the “Commodities Laws”) that is under investigation by the Fraud Section until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded, or the end of the term specified in Paragraph 3. At the request of the Fraud Section, the Company shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies in any investigation of the Company, its affiliates, or any of its present or former officers, members, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other conduct related to violations of the Commodities Laws. The Company’s cooperation pursuant to this Paragraph is subject to applicable law and regulations, as well as valid claims of attorney-client privilege or attorney work product doctrine; however, the Company must provide to the Fraud Section a log of any information or cooperation that is not provided based on an assertion of law, regulation, or privilege, and the Company bears the burden of establishing the validity of any such assertion. The Company agrees that its cooperation pursuant to this paragraph shall include, but not be limited to, the following:

a. The Company shall truthfully disclose all factual information with respect to its activities and those of its parent company and affiliates, and those of its present and former members, officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which the Company has any knowledge or about which the Fraud Section may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Company to provide to the Fraud Section, upon request, any document, record, or other tangible evidence about which the Company has knowledge or about which the Fraud Section may inquire of the Company.

b. Upon request of the Fraud Section, the Company shall designate knowledgeable employees, agents, or attorneys to provide to the Fraud Section the information and materials described in Paragraph 5(a) above on behalf of the Company. It is further understood that the Company must at all times provide complete, truthful, and accurate information.

c. The Company shall use its best efforts to make available for interviews or testimony, as requested by the Fraud Section, present or former officers, members, employees, agents, and consultants of the Company. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of the Company, may have material information regarding the matters under investigation.

d. With respect to any information, testimony, documents, records, or other tangible evidence provided to the Fraud Section pursuant to this Agreement, the Company consents to any and all disclosures to other governmental authorities, including United States authorities and those of a foreign government of such materials as the Fraud Section, in its sole discretion, shall deem appropriate.

6. In addition to the obligations in Paragraph 5, during the Term, should the Company learn of any evidence or allegation of conduct that may constitute a violation of the Commodities Laws, the Company shall promptly report such evidence or allegation to the Fraud Section.

**Total U.S. Monetary Amount**

7. The Fraud Section and the Company agree that the U.S. Criminal Monetary Amount to be paid by the Company pursuant to this Agreement is \$1,000,000, which is comprised

of the following components set forth below: (i) a Criminal Monetary Penalty in the amount of \$462,271; (ii) a Criminal Disgorgement Amount of \$73,429; and (iii) a Victim Compensation Payment Amount of \$464,300.

8. The Fraud Section agrees that the amount of the Criminal Monetary Penalty will be offset by the amount of any payment made pursuant to the order and settlement between the Company and the CFTC relating to the conduct described in the attached Statement of Facts.

9. The Company acknowledges that no tax deduction may be sought in connection with the payment of any of the components of the U.S. Criminal Monetary Amount. The Company shall not seek or accept directly or indirectly reimbursement or indemnification from any source with regard to the U.S. Criminal Monetary Amount that the Company pays pursuant to this Agreement or to any other agreement entered into with an enforcement authority or regulator, including the CFTC, concerning the facts set forth in the attached Statement of Facts.

#### **Payment of Criminal Monetary Penalty**

10. The Fraud Section and the Company agree that application of the United States Sentencing Guidelines (“USSG” or “Sentencing Guidelines”) to determine the applicable fine range yields the following analysis:

- a. The November 1, 2018 USSG are applicable to this matter.
- b. Offense Level. Based upon USSG § 2B1.1, the total offense level is 22, calculated as follows:

(a)(1)	Base Offense Level	6
(b)(1)(G)	Loss Exceeds \$250,000	+12
(b)(2)(A)(i)	More Than 10 Victims	+2
(b)(10)	Sophisticated Means	+2
<b>TOTAL</b>		<u>22</u>



c. Base Fine. Based upon USSG § 8C2.4(a)(1), the base fine is \$2,000,000 (the pecuniary loss under USSG § 8C2.4(a)(3) is less than the \$2,000,000 fine indicated in the Offense Level Fine Table under §8C2.4(d))

d. Culpability Score. Based upon USSG § 8C2.5, the culpability score is 5, calculated as follows:

(a) Base Culpability Score	5
(b)(4) the organization had 50 or more employees and an individual within substantial authority personnel of the organization participated in, condoned, or was willfully ignorant of the offense	+2
(g)(2) the organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct	-2
<b>TOTAL</b>	<u>5</u>

Calculation of Fine Range:

Base Fine	\$2,000,000
Multipliers	1 (min) / 2 (max)
Fine Range	\$2,000,000 / \$4,000,000

11. The Company agrees to pay a Criminal Monetary Penalty in the amount of \$462,271 to the United States Treasury no later than the end of the Term pursuant to payment instructions provided by the Fraud Section, in its sole discretion. The Company and the Fraud Section agree that this Criminal Monetary Penalty is appropriate given the facts and circumstances of this case, including the Relevant Considerations described in Paragraph 4 of this Agreement, and given the Company's inability to pay an amount within the range calculated under the Sentencing Guidelines because it would threaten the continued viability of the Company and impair the Company's ability to make restitution to victims.

12. The \$462,271 Criminal Monetary Penalty is final and shall not be refunded. Furthermore, nothing in this Agreement shall be deemed an agreement by the Fraud Section that

\$462,271 is the maximum fine that may be imposed in any future prosecution, and the Fraud Section is not precluded from arguing in any future prosecution that the Court should impose a higher fine, although the Fraud Section agrees that under those circumstances, it will recommend to the Court that any amount paid as part of the Criminal Monetary Penalty should be offset against any fine the Court imposes as part of a future judgment.

#### **Payment of Criminal Disgorgement Amount**

13. The Company agrees that the overall profit it earned from Zhao's trading activity, including the conduct set forth in the Statement of Facts, is at least \$73,429. The Company hereby agrees to disgorge to the United States the sum of \$73,429 (the "Criminal Disgorgement Amount"). The Company shall pay the Criminal Disgorgement Amount no later than the end of the Term pursuant to payment instructions provided by the Fraud Section, in its sole discretion.

14. The Criminal Disgorgement Amount paid is final and shall not be refunded should the Fraud Section later determine that the Company has breached this Agreement and commence a prosecution against the Company. In the event of a breach of this Agreement and subsequent prosecution, the Fraud Section may pursue additional disgorgement and civil and criminal forfeiture in excess of the Criminal Disgorgement Amount. The Fraud Section agrees that in the event of a subsequent breach and prosecution, it will recommend to the Court that the amount paid pursuant to this Agreement be offset against whatever disgorgement the Court shall impose as part of its judgment. The Company understands that such a recommendation will not be binding on the Court.

#### **Payment of Victim Compensation Amount**

15. The Company agrees to pay the amount of \$464,300 in order to compensate victims for their losses in connection with the conduct set forth in the Statement of Facts (hereafter, the "Victim Compensation Amount"). The Company shall pay the full Victim Compensation Amount

to the United States no later than fifteen (15) business days after the Agreement is fully executed pursuant to payment instructions provided by the Fraud Section in its sole discretion.

16. The Fraud Section shall serve as the claims administrator for making victim compensation payments, and shall have sole discretion to determine how the Victim Compensation Amount will be disbursed.

17. The Company agrees that any unclaimed part of the Victim Compensation Amount remaining at the end of the Term shall revert to the United States in the form of an additional Criminal Monetary Penalty.

#### **Conditional Release from Liability**

18. Subject to Paragraphs 24-28 of this Agreement, the Fraud Section agrees, except as provided in this Agreement, that it will not bring any criminal or civil case against the Company relating to any of the conduct described in the attached Statement of Facts or the criminal Information filed pursuant to this Agreement. The Fraud Section, however, may use any information related to the conduct described in the attached Statement of Facts against the Company: (i) in a prosecution for perjury or obstruction of justice; (ii) in a prosecution for making a false statement; (iii) in a prosecution or other proceeding relating to any crime of violence; or (iv) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code.

a. This Agreement does not provide any protection against prosecution for any future conduct by the Company.

b. In addition, this Agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with the Company.

### **Corporate Compliance Program**

19. The Company represents that it has implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of the Commodities Laws throughout its operations, including those of its affiliates, agents, and joint ventures (to the extent that the Company manages or controls such joint ventures), and those of its contractors and subcontractors whose responsibilities relate to commodities trading or supervision of commodities trading, including, but not limited to, the minimum elements set forth in Attachment C.

20. In order to address any deficiencies in its internal controls, policies, and procedures, the Company represents that it has undertaken, and will continue to undertake in the future, in a manner consistent with all of its obligations under this Agreement, a review of its existing controls (including its trade surveillance tools), policies, and procedures regarding compliance with the Commodities Laws. Where necessary and appropriate, the Company agrees to adopt a new compliance program, or to modify its existing one, including its internal controls, compliance policies, and procedures in order to ensure that it maintains an effective compliance program, including a system of internal controls, designed to effectively detect and deter violations of the Commodities Laws. The compliance program, including the system of internal controls, will include, but not be limited to, the minimum elements set forth in Attachment C.

### **Corporate Compliance Reporting**

21. The Company agrees that it will report to the Fraud Section annually during the Term regarding remediation and implementation of the compliance measures described in Attachment C. These reports will be prepared in accordance with Attachment D.

### **Deferred Prosecution**

22. In consideration of the undertakings agreed to by the Company herein, the Fraud Section agrees that any prosecution of the Company for the conduct set forth in the attached

Statement of Facts be and hereby is deferred for the Term. To the extent there is conduct disclosed by the Company that is not set forth in the attached Statement of Facts, such conduct will not be exempt from further prosecution and is not within the scope of, or relevant to, this Agreement.

23. The Fraud Section further agree that if the Company fully complies with all of its obligations under this Agreement, the Fraud Section will not continue the criminal prosecution against the Company described in Paragraph 1 of this Agreement and, at the conclusion of the Term, this Agreement shall expire. Within six months after the Agreement's expiration, the Fraud Section shall seek dismissal with prejudice of the criminal Information filed against the Company described in Paragraph 1, and agrees not to file charges in the future against the Company based on the conduct described in this Agreement and the attached Statement of Facts.

#### **Breach of the Agreement**

24. If, during the Term, the Company (i) commits any felony under United States federal law; (ii) provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with its disclosure of information about individual culpability; (iii) fails to cooperate as set forth in Paragraphs 5 and 6 of this Agreement; (iv) fails to implement a compliance program as set forth in Paragraphs 19 and 20 of this Agreement and Attachment C; or (v) otherwise fails to completely perform or fulfill each of the Company's obligations under this Agreement, regardless of whether the Fraud Section becomes aware of such a breach after the Term is complete, the Company shall thereafter be subject to prosecution for any federal criminal violation of which the Fraud Section has knowledge, including, but not limited to, the charges in the Information described in Paragraph 1, which may be pursued by the Fraud Section in the United States District Court for the Northern District of Illinois or any other appropriate venue. The Company agrees not to contest the Fraud Section's determination of breach. The Company further understands that in the event it breaches this Agreement, the Fraud

Section, at its option, may pursue prosecution of the Company. Any such prosecution may be premised on information provided by the Company or its personnel. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the Fraud Section prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Company, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, the Company agrees that the statute of limitations as to any violation of the Commodities Laws that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which the Fraud Section is made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

25. In the event the Fraud Section determines that the Company has breached this Agreement, the Fraud Section agrees to provide the Company with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, the Company shall have the opportunity to respond to the Fraud Section in writing to explain the nature and circumstances of such breach, as well as the actions the Company has taken to address and remediate the situation, which explanation the Fraud Section shall consider in determining whether to pursue prosecution of the Company.

26. In the event that the Fraud Section determines that the Company has breached this Agreement: (i) all statements made by or on behalf of the Company to the Fraud Section or to the

Court, including the attached Statement of Facts, and any testimony given by the Company before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Fraud Section against the Company; and (ii) the Company shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of the Company prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current member, officer or employee, or any person acting on behalf of, or at the direction of, the Company, will be imputed to the Company for the purpose of determining whether the Company has violated any provision of this Agreement shall be in the sole discretion of the Fraud Section.

27. The Company acknowledges that the Fraud Section has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if the Company breaches this Agreement and this matter proceeds to judgment. The Company further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

28. On the date that the period of deferred prosecution specified in this Agreement expires, the Company, by the Chief Executive Officer of the Company and the Chief Financial Officer of the Company, will certify to the Fraud Section that the Company has met its disclosure obligations pursuant to Paragraph 6 of this Agreement. Each certification will be deemed a material statement and representation by the Company to the executive branch of the United States

for purposes of Title 18, United States Code, Sections 1001 and 1519, and it will be deemed to have been made in the judicial district in which this Agreement is filed.

**Sale, Merger, or Other Change in Corporate Form of Company**

29. Except as may otherwise be agreed by the parties in connection with a particular transaction, the Company agrees that in the event that, during the Term, it undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to the Company's consolidated operations, or to the operations of any subsidiaries or affiliates involved in the conduct described in the attached Statement of Facts, as they exist as of the date of this Agreement, whether such sale is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The purchaser or successor in interest must also agree in writing that the ability of the Fraud Section to breach under this Agreement is applicable in full force to that entity. The Company agrees that the failure to include these provisions in the transaction will make any such transaction null and void. The Company shall provide notice to the Fraud Section at least thirty (30) days prior to undertaking any such sale, merger, transfer, or other change in corporate form. The Fraud Section shall notify the Company prior to such transaction (or series of transactions) if it determines that the transaction(s) will have the effect of circumventing or frustrating the enforcement purposes of this Agreement. At any time during the Term the Company engages in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes of this Agreement, the Fraud Section may deem it a breach of this Agreement pursuant to Paragraphs 24-28 of this Agreement. Nothing herein shall restrict the Company from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of



the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined by the Fraud Section.

**Public Statements by Company**

30. The Company expressly agrees that it shall not, through present or future attorneys, officers, members, employees, agents, or any other person authorized to speak for the Company make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Company set forth above or the facts described in the attached Statement of Facts. Any such contradictory statement shall, subject to cure rights of the Company described below, constitute a breach of this Agreement, and the Company thereafter shall be subject to prosecution as set forth in Paragraphs 24-28 of this Agreement. The decision whether any public statement by any such person contradicting a fact contained in the attached Statement of Facts will be imputed to the Company for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the Fraud Section. If the Fraud Section determines that a public statement by any such person contradicts in whole or in part a statement contained in the attached Statement of Facts, the Fraud Section shall so notify the Company, and the Company may avoid a breach of this Agreement by publicly repudiating such statement(s) within five (5) business days after notification. The Company shall be permitted to raise defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the attached Statement of Facts provided that such defenses and claims do not contradict, in whole or in part, a statement contained in the attached Statement of Facts. This Paragraph does not apply to any statement made by any present or former officer, member, employee, or agent of the Company in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of the Company.

31. The Company agrees that if it or any of its direct or indirect subsidiaries or affiliates issues a press release or holds any press conference in connection with this Agreement, the Company shall first consult with the Fraud Section to determine (i) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the Fraud Section and the Company; and (ii) whether the Fraud Section has any objection to the release.

32. The Fraud Section agrees, if requested to do so, to bring to the attention of law enforcement and regulatory authorities the facts and circumstances relating to the nature of the conduct underlying this Agreement, including the nature and quality of the Company's cooperation and remediation. By agreeing to provide this information to such authorities, the Fraud Section is not agreeing to advocate on behalf of the Company, but rather are agreeing to provide facts to be evaluated independently by such authorities.

#### **Limitations on Binding Effect of Agreement**

33. This Agreement is binding on the Company and the Fraud Section but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local, or foreign law enforcement or regulatory agencies, or any other authorities, although the Fraud Section will bring the cooperation of the Company and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by the Company. The Company and the Fraud Section agree that if the Court rejects the Agreement, all the provisions of the Agreement shall be deemed null and void, and the Term shall be deemed to have not begun.

### Notice

34. Any notice to the Fraud Section under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to:

Sally Molloy  
Deputy Chief, Fraud Section  
Criminal Division, U.S. Department of Justice  
1400 New York Avenue NW  
Washington, DC, 20005

Any notice to the Company under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to:

Matthew O'Brien  
Chief Executive Officer  
Propex Derivatives Pty Ltd  
Level 24, 66 Goulburn Street  
Sydney NSW 2000, Australia

Notice shall be effective upon actual receipt by the Fraud Section or the Company.


### Complete Agreement

35. This Agreement, including its attachments, sets forth all the terms of the agreement between the Company and the Fraud Section. No amendments, modifications, or additions to this Agreement shall be valid unless they are in writing and signed by the Fraud Section, the attorneys for the Company, and a duly authorized representative of the Company.

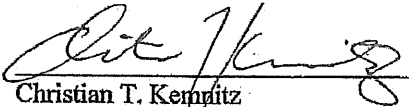
**AGREED:**

**FOR PROPEX DERIVATIVES PTY LTD:**

Date: 19/1/20

By:   
Matthew O'Brien  
Chief Executive Officer  
Propex Derivatives Pty Ltd


Date: January 19, 2021

By:   
Christian T. Kempfitz  
Joseph C. Platt  
Katten Muchin Rosenman LLP  
Counsel for Propex Derivatives Pty Ltd

**FOR THE DEPARTMENT OF JUSTICE:**

ROBERT A. ZINK  
Chief, Fraud Section  
Criminal Division  
United States Department of Justice

Date: 1/21/20

By:   
Matthew F. Sullivan  
Trial Attorney

Justin Weitz  
Assistant Chief

## COMPANY OFFICER'S CERTIFICATE

I have read this Agreement and carefully reviewed every part of it with outside counsel for Propex Derivatives Pty Ltd (the "Company"). I understand the terms of this Agreement and voluntarily agree, on behalf of the Company, to each of its terms. Before signing this Agreement, I consulted outside counsel for the Company. Counsel fully advised me of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

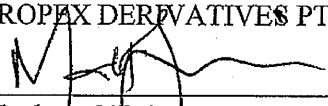
I have carefully reviewed the terms of this Agreement with the members of the Company. I have advised and caused outside counsel for the Company to advise the members fully of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of the Company, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the Chief Executive Officer for the Company and that I have been duly authorized by the Company to execute this Agreement on behalf of the Company.

Date: 19/1/20

PROPEX DERIVATIVES PTY LTD

By:

  
\_\_\_\_\_  
Matthew O'Brien  
Chief Executive Officer


### CERTIFICATE OF COUNSEL

I am counsel for Propex Derivatives Pty Ltd (the "Company") in the matter covered by this Agreement. In connection with such representation, I have examined relevant Company documents and have discussed the terms of this Agreement with the Company members. Based on our review of the foregoing materials and discussions, I am of the opinion that the representative of the Company has been duly authorized to enter into this Agreement on behalf of the Company and that this Agreement has been duly and validly authorized, executed, and delivered on behalf of the Company and is a valid and binding obligation of the Company. Further, I have carefully reviewed the terms of this Agreement with the members and the Chief Executive Officer of the Company. I have fully advised them of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. To my knowledge, the decision of the Company to enter into this Agreement, based on the authorization of the members, is an informed and voluntary one.

Date:

January 19, 2020

By:

  
\_\_\_\_\_  
Christian T. Kemnitz  
Joseph C. Platt  
Katten Muchin Rosenman LLP  
Counsel for Propex Derivatives Pty Ltd

## ATTACHMENT A

### **STATEMENT OF FACTS**

1. The following Statement of Facts is incorporated by reference as part of the Deferred Prosecution Agreement (the "Agreement") between the United States Department of Justice, Criminal Division, Fraud Section (the "Fraud Section") and Propex Derivatives Pty Ltd (the "Company"). The Company hereby agrees and stipulates that the following information is true and accurate. The Company admits, accepts, and acknowledges that it is responsible for the acts of its officers, members, employees, and agents as set forth below. Should the Fraud Section pursue the prosecution that is deferred by this Agreement, the Company agrees that it will neither contest the admissibility of, nor contradict, this Statement of Facts in any such proceeding. The following facts establish beyond a reasonable doubt the charges set forth in the criminal Information attached to this Agreement:

2. The Company is a proprietary trading firm headquartered in Sydney, Australia that trades on exchanges around the world, including in the United States, Australia, Singapore, Hong Kong, Malaysia, Europe, New Zealand, Japan, and South Korea.

3. From approximately July 2012 and until approximately March 2016 (the "Relevant Period"), Jiongsheng ("Jim") Zhao, while acting as a trader at the Company, devised, implemented, and executed a trading strategy that involved placing thousands of large-volume orders to buy and sell E-mini S&P 500 futures contracts (the "Large Orders") on the Chicago Mercantile Exchange ("CME") that, at the time Zhao placed the orders, he intended to cancel before execution.

4. The CME Group Inc. is a commodities marketplace made up of several exchanges, including the CME, which is based in Chicago, Illinois. During the Relevant Period, the CME was a registered entity, operating as a Designated Contract Market, and subject to regulation by

the U.S. Commodity Futures Trading Commission. Market participants trading on the CME were subject to its rules.

5. In total, during the Relevant Period, Zhao's trading activity involving the placement of thousands of Large Orders directly and proximately caused \$464,300 in actual losses to hundreds of other participants in the markets for E-Mini S&P 500 futures contracts.

6. When placing the Large Orders, Zhao was acting, at least in part, to benefit the Company and within the scope of his authority as an agent of the Company.



ATTACHMENT B

**CERTIFICATE OF CORPORATE RESOLUTIONS**

**PROPEX DERIVATIVES PTY LTD**

WHEREAS, Propex Derivatives Pty Ltd (the “Company”) has been engaged in discussions with the United States Department of Justice, Criminal Division, Fraud Section (the “Fraud Section”) regarding issues arising in connection with unlawful commodities trading activity by a former employee of the Company; and

WHEREAS, in order to resolve such discussions, it is proposed that the Company enter into a certain agreement with the Fraud Section; and

WHEREAS, the Company’s Chief Executive Officer, Matthew O’Brien, together with outside counsel for the Company, have advised the members of the Company of its rights, possible defenses, the Sentencing Guidelines’ provisions, and the consequences of entering into such agreement with the Fraud Section;

NOW, THEREFORE, BE IT RESOLVED, that:

1. The Company (a) acknowledges the filing of the one-count Information charging the Company with commodities fraud, in violation of Title 7, United States Code, Sections 6c(a)(5)(C) and 13(a)(2) (the “Information”); (b) waives indictment on such charges and enters into a deferred prosecution agreement with the Fraud Section (the “Agreement”); and (c) agrees to pay a Criminal Monetary Penalty Amount of \$462,271, a Criminal Disgorgement Amount of \$73,429, and a Victim Compensation Amount of \$464,300, under the Agreement with respect to the conduct described in the Information;

2. The Company accepts the terms and conditions of the Agreement, including, but not limited to, (a) a knowing waiver of its rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of


Criminal Procedure 48(b); and (b) a knowing waiver for purposes of the Agreement and any charges by the United States arising out of the conduct described in the attached Statement of Facts of any objection with respect to venue and consents to the filing of the Information, as provided under the terms of the Agreement, in the United States District Court for the Northern District of Illinois; and (c) a knowing waiver of any defenses based on the statute of limitations for any prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the Fraud Section prior to the date on which the Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of the Agreement;

3. The Chief Executive Officer of the Company, Matthew O'Brien, is hereby authorized, empowered, and directed, on behalf of the Company, to execute the Agreement substantially in such form as reviewed by the members with such changes as the Chief Executive Officer of the Company, Matthew O'Brien, may approve;

4. The Chief Executive Officer of the Company, Matthew O'Brien, is hereby authorized, empowered, and directed to take any and all actions as may be necessary or appropriate and to approve the forms, terms, or provisions of any agreement or other documents as may be necessary or appropriate, to carry out and effectuate the purpose and intent of the foregoing resolutions; and

5. All of the actions of the Chief Executive Officer of the Company, Matthew O'Brien, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved, and adopted as actions on behalf of the Company.

Date: 19/1/20

By:   
Matthew O'Brien  
Propek Derivatives Pty Ltd

## ATTACHMENT C

### **CORPORATE COMPLIANCE PROGRAM**

In order to address any deficiencies in its internal controls, compliance code, policies, and procedures regarding compliance with the Commodities Exchange Act, Title 7, United States Code, Section 1, *et seq.*, and the commodities fraud statute, Title 18, United States Code, Section 1348 (collectively, the “Commodities Laws”), Propex Derivatives Pty Ltd (together with its subsidiaries and affiliates, the “Company”) agrees to continue to conduct, in a manner consistent with all of its obligations under this Agreement, appropriate reviews of its existing internal controls, policies, and procedures.

Where necessary and appropriate, the Company agrees to modify its compliance program, including internal controls, compliance policies, and procedures in order to ensure that it maintains an effective compliance program that is designed to deter and detect violations of the Commodities Laws. At a minimum, this should include, but not be limited to, the following elements to the extent they are not already part of the Company’s existing internal controls, compliance code, policies, and procedures:

#### *High-Level Commitment*

1. The Company will ensure that its members and senior management provide strong, explicit, and visible support and commitment to its corporate policy against violations of the Commodities Laws and the Company’s compliance code.

#### *Policies and Procedures*

2. The Company will develop and promulgate clearly articulated and visible corporate policies against violations of the Commodities Laws, which policy shall be memorialized in a written compliance code.

3. The Company will develop and promulgate compliance policies and procedures designed to reduce the prospect of violations of the Commodities Laws and the Company's compliance code, and the Company will take appropriate measures to encourage and support the observance of ethics and compliance policies and procedures against violation of the Commodities Laws by personnel at all levels of the Company. These policies and procedures shall apply to all members, officers, and employees, and where necessary and appropriate, outside parties acting on behalf of the Company, including but not limited to, agents and intermediaries, representatives, and joint venture partners (collectively, "agents and business partners"). The Company shall notify all employees that compliance with the policies and procedures is the duty of individuals at all levels of the Company.

*Periodic Risk-Based Review*

4. The Company will develop these compliance policies and procedures on the basis of a periodic risk assessment addressing the Commodities Laws.

5. The Company shall review its compliance policies and procedures no less than annually and update them as appropriate to ensure their continued effectiveness.

*Proper Oversight and Independence*

6. The Company will assign responsibility to one or more senior corporate executives of the Company for the implementation and oversight of the Company's compliance code, policies, and procedures. Such corporate official(s) shall have the authority to report directly to the Company's members, or any appropriate committee of the Company's members, and shall have an adequate level of autonomy from management as well as sufficient resources and authority to maintain such autonomy.

### *Training and Guidance*

7. The Company will implement mechanisms designed to ensure that its compliance code, policies, and procedures are effectively communicated to all members, officers, employees, and, where necessary and appropriate, agents and business partners. These mechanisms shall include: (a) periodic training for all members and officers, all employees in positions of leadership or trust, all commodities traders (whether employees or independent contractors), and any positions that require such training (*e.g.*, internal audit, sales, legal, compliance, finance); and (b) corresponding certifications by all such members, officers, employees, commodities traders, agents, and business partners, certifying compliance with the training requirements.

8. The Company will maintain, or where necessary establish, an effective system for providing guidance and advice to members, officers, employees, commodities traders, and, where necessary and appropriate, agents and business partners, on complying with the Company's compliance code, policies, and procedures, including when they need advice on an urgent basis.

### *Internal Reporting and Investigation*

9. The Company will maintain, or where necessary establish, an effective system for internal and, where possible, confidential reporting by, and protection of, members, officers, employees, and, where appropriate, agents and business partners, concerning violations of the Commodities Laws or the Company's compliance code, policies, and procedures.

10. The Company will maintain, or where necessary establish, an effective and reliable process with sufficient resources for responding to, investigating, and documenting allegations of violations of the Commodities Laws or the Company's compliance code, policies, and procedures.

### *Enforcement and Discipline*

11. The Company will implement mechanisms designed to effectively enforce its compliance code, policies, and procedures, including appropriately incentivizing compliance and disciplining violations.

12. The Company will institute appropriate disciplinary procedures to address, among other things, violations of the Commodities Laws and the Company's compliance code, policies, and procedures by the Company's members, officers, and employees. Such procedures should be applied consistently and fairly, regardless of the position held by, or perceived importance of, the member, officer, or employee. The Company shall implement procedures to ensure that where misconduct is discovered, reasonable steps are taken to remedy the harm resulting from such misconduct, and to ensure that appropriate steps are taken to prevent further similar misconduct, including assessing the internal controls, compliance code, policies, and procedures and making modifications necessary to ensure the overall compliance program is effective.

### *Third-Party Relationships*

13. The Company will institute appropriate risk-based due diligence and compliance requirements pertaining to the retention and oversight of all agents and business partners, including:

- a. properly documented due diligence pertaining to the hiring and appropriate and regular oversight of agents and business partners;
- b. informing agents and business partners of the Company's commitment to abiding by the Commodities Laws, and of the Company's compliance code, policies, and procedures; and
- c. seeking a reciprocal commitment from agents and business partners.

14. Where necessary and appropriate, the Company will include standard provisions in agreements, contracts, and renewals thereof with all agents and business partners that are reasonably calculated to prevent violations of the Commodities Laws, which may, depending upon the circumstances, include: (a) representations and undertakings relating to compliance with the Commodities Laws; (b) rights to conduct audits of the trading activity of the agent or business partner to ensure compliance with the foregoing; and (c) rights to terminate an agent or business partner as a result of any breach of the Commodities Laws, the Company's compliance code, policies, or procedures, or the representations and undertakings related to such matters.

#### *Mergers and Acquisitions*

15. The Company will develop and implement policies and procedures for mergers and acquisitions requiring that the Company conduct appropriate risk-based due diligence on potential new business entities, including appropriate due diligence by legal, accounting, and compliance personnel.

16. The Company will ensure its compliance code, policies, and procedures apply as quickly as is practicable to newly acquired businesses or entities merged with the Company and will promptly (a) train the members, officers, employees, commodities traders, agents, and business partners consistent with Paragraphs 7-8; and (b) where warranted, conduct an audit of all newly acquired or merged businesses as quickly as is practicable concerning compliance with the Commodities Laws.

#### *Monitoring and Testing*

17. The Company will conduct periodic reviews and testing of its compliance code, policies, and procedures designed to evaluate and improve their effectiveness in preventing and detecting violations of Commodities Laws and the Company's code, policies, and procedures,

taking into account relevant developments in the field and evolving international and industry standards.

18. The Company will maintain, or where necessary establish, an effective trade surveillance program capable of detecting trading activity that has indicia of fraudulent, manipulative, or otherwise unlawful conduct.



ATTACHMENT D

**REPORTING REQUIREMENTS**

Propex Derivative Pty Ltd (the “Company”) agrees that it will report to the United States Department of Justice, Criminal Division, Fraud Section (the “Fraud Section”) periodically, at no less than twelve-month intervals during a three-year term, regarding remediation and implementation of the compliance program and internal controls, policies, and procedures described in Attachment C. During this three-year period, the Company shall: (i) conduct an initial review and submit an initial report, and (ii) conduct and prepare at least two follow-up reviews and reports, as described below:

a. By no later than one year from the date this Agreement is fully executed, the Company shall submit to the Fraud Section a written report setting forth a complete description of its remediation efforts to date, its proposals reasonably designed to improve the Company’s internal controls, policies, and procedures for ensuring compliance with the Commodities Exchange Act, Title 7, United States Code, Section 1, *et seq.*, and the commodities fraud statute, Title 18, United States Code, Section 1348 (collectively, the “Commodities Laws”), and the proposed scope of the subsequent reviews. The report shall be transmitted to:

Sally Molloy  
Deputy Chief, Fraud Section  
Criminal Division, U.S. Department of Justice  
1400 New York Avenue NW  
Washington, DC 20005

The Company may extend the time period for issuance of the report with prior written approval of the Fraud Section.

b. The Company shall undertake at least two follow-up reviews and reports, incorporating the views of the Fraud Section on the Company’s prior reviews and reports, to further

monitor and assess whether the Company's policies and procedures are reasonably designed to detect and prevent violations of the Commodities Laws.

c. The first follow-up review and report shall be completed by no later than one year after the initial report is submitted to the Fraud Section. The second follow-up review and report shall be completed and delivered to the Fraud Section no later than thirty (30) days before the end of the Term.

d. The reports will likely include proprietary, financial, confidential, and competitive business information. Moreover, public disclosure of the reports could discourage cooperation, impede pending or potential government investigations, and thus undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing, or except to the extent that the Fraud Section determines in its sole discretion that disclosure would be in furtherance of the Fraud Section's discharge of its duties and responsibilities or is otherwise required by law.

e. The Company may extend the time period for submission of any of the follow-up reports with prior written approval of the Fraud Section.