

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

<hr/>)
U.S. COMMODITY FUTURES TRADING)
COMMISSION,)
)
	Plaintiff,)
)
	v.)
)
WILLIAM BYRNES, CHRISTOPHER)
CURTIN, THE NEW YORK MERCANTILE)
EXCHANGE, INC., and RON EIBSCHUTZ,)
)
	Defendants.)
<hr/>)

**No. 13 Civ. 1174 (VSB)
ECF Case**

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTY
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANTS WILLIAM BYRNES,
CHRISTOPHER CURTIN, AND THE NEW YORK MERCANTILE EXCHANGE, INC.**

I. INTRODUCTION

On February 21, 2013, Plaintiff U.S. Commodity Futures Trading Commission (“Commission”) filed a Complaint against Defendants William Byrnes (“Byrnes”), Christopher Curtin (“Curtin”), and the New York Mercantile Exchange, Inc. (“NYMEX”) seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1–26 (2018), and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. pts. 1-190 (2019).¹

¹ On May 8, 2013, the Commission filed an Amended Complaint adding Defendant Ron Eibschutz (“Eibschutz”) as a party and charging him with aiding and abetting Byrnes’ and Curtin’s violations of the Act and Regulations. This Consent Order does not resolve the Commission’s claim against Eibschutz.

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Defendants Byrnes, Curtin, and NYMEX (“Settling Defendants”) without a trial on the merits or any further judicial proceedings, Settling Defendants:

1. Consent to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendants William Byrnes, Christopher Curtin, and the New York Mercantile Exchange, Inc. (“Consent Order”);
2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent, or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledge service of the summons, Complaint, and Amended Complaint;
4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018);
5. Admit the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act;
6. Admit that venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e);
7. Waive:
 - (a) Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018) and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2019), relating to, or arising from, this action;
 - (b) 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 action;

- (c) Any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and
- (d) Any and all rights of appeal from this action;

8. Consent to the continued jurisdiction of this Court over them for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Settling Defendants now or in the future reside outside the jurisdiction of this Court;

9. Agree that they will not oppose enforcement of this Consent Order on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and hereby waive any objection based thereon;

10. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Amended Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Amended Complaint or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Settling Defendants shall comply with this agreement, and 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;

11. Consent to the entry of this Consent Order without admitting or denying the allegations of the Amended Complaint or any findings or conclusions in this Consent Order, except as to jurisdiction and venue, which they admit;

12. Consent to the use of the findings and conclusions in this Consent Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof;

13. Do not consent, however, to the use of this Consent Order, or the findings and conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party, other than a: statutory disqualification proceeding; proceeding in bankruptcy, or receivership; or proceeding to enforce the terms of this Order;

14. Agree to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 40 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against them, whether inside or outside the United States; and

15. Agree that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Settling Defendants in any other proceeding.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), as set forth herein. The findings and conclusions in this Consent Order are not binding on any other party to this action.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

The Parties to this Consent Order

16. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act and the Regulations.

17. Defendant NYMEX is a commodity futures and options exchange. NYMEX offers a platform called ClearPort Clearing that gives customers a way to clear trades through NYMEX. At all relevant times, NYMEX was a board of trade designated as a contract market and self-regulatory organization, and a registered entity under the Act. NYMEX's headquarters is located in New York, New York.

18. Defendant Byrnes is an individual who resides in New York. From March 2007 through December 2010, Defendant Byrnes was employed by NYMEX and worked on the ClearPort Facilitation Desk. Byrnes has never been registered with the Commission in any capacity.

19. Defendant Curtin is an individual who resided in New York during the relevant period. From July 2000 through April 2009, Defendant Curtin was employed by NYMEX and worked on the ClearPort Facilitation Desk. Curtin has never been registered with the Commission in any capacity.

Disclosures of Confidential Trade Information

20. On numerous occasions between 2008 and 2010, Byrnes and Curtin disclosed to Ron Eibschutz, a broker, confidential information about derivatives trading activity that they obtained during the course of their employment at NYMEX.

21. The disclosures by Byrnes and Curtin to Eibschutz pertained to trading activity in options on commodity futures, principally in the crude oil and natural gas markets.

22. Byrnes and Curtin disclosed, among other things, the identities of counterparties to specific options trades, whether a particular counterparty purchased or sold the option, whether it was a call or a put, the volume of contracts traded, the expiry, the strike price, and the trade price.

23. Byrnes' and Curtin's disclosures contained material nonpublic information they obtained through their special access as NYMEX employees.

24. At the time, Byrnes and Curtin knew or recklessly disregarded that they should not disclose the trade information to Eibschutz, and that the information was both nonpublic and material.

25. Byrnes and Curtin acted within the scope of their employment as NYMEX employees when they made the improper disclosures of material, nonpublic information.

26. NYMEX terminated Byrnes in December 2010. Curtin voluntarily resigned from NYMEX in April 2009.

B. Conclusions of Law

Jurisdiction and Venue

27. This Court possesses jurisdiction over this action pursuant to 28 U.S.C. § 1331 (2018) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2018), provides that the Commission may bring actions for injunctive relief or to enforce compliance with the Act or any rule, regulation, or order thereunder in the proper district court of the United States whenever it shall appear to the Commission that any person has

engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

28. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because Settling Defendants are found in or are or were during the relevant period inhabitants of or transact business in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

Disclosures by Byrnes and Curtin of Material Nonpublic Information

29. By the conduct described in paragraphs 20 through 26 above, Byrnes and Curtin violated Section 9(e)(1) of the Act, by willfully and knowingly disclosing for purposes inconsistent with the performance of their official duties as employees of NYMEX, material nonpublic information obtained through special access related to the performance of such duties.

30. By the conduct described in paragraphs 20 through 26 above, Byrnes and Curtin, violated Regulation 1.59(d)(1)(ii) by disclosing for purposes inconsistent with the performance of their official duties as NYMEX employees, material nonpublic information obtained through special access related to the performance of such duties.

Vicarious Liability of NYMEX for Byrnes and Curtin's Violations

31. By the conduct described in paragraphs 20 through 26 above, Byrnes and Curtin were acting as agents and employees of NYMEX when they violated Section 9(e)(1) of the Act and Regulation 1.59(d)(1)(ii), and, therefore, the acts, omissions, and failures of Byrnes and Curtin in their disclosures of material nonpublic information are deemed also to be the acts, omissions, and failures of NYMEX, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B). Accordingly, NYMEX, as Byrnes and Curtin's principal, is vicariously liable for Byrnes and Curtin's violations, pursuant to Section 2(a)(1)(B) of the Act.

IV. INJUNCTIVE RELIEF

IT IS HEREBY ORDERED THAT:

32. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), Byrnes and Curtin are permanently restrained, enjoined and prohibited from directly or indirectly:

- (a) Willfully and knowingly, in violation of a regulation issued by the Commission, disclosing for purposes inconsistent with the performance of their official duties as employees of a board of trade, registered entity, or registered futures association any material nonpublic information obtained through special access related to the performance of such duties, in violation of Section 9(e)(1) of the Act, 7 U.S.C. § 13(e)(1) (2018); and
- (b) Disclosing for any purpose inconsistent with the performance of their official duties as employees of a self-regulatory organization any material nonpublic information obtained through special access related to the performance of such duties, in violation of Regulation 1.59(d)(1)(ii), 17 C.F.R. § 1.59(d)(1)(ii).

33. Byrnes and Curtin are also permanently restrained, enjoined and prohibited from directly or indirectly:

- (a) 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) (2018));
- (b) Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019), for their own personal account or for any account in which they have a direct or indirect interest;
- (c) Having any commodity interests traded on their behalf;
- (d) Controlling or directing 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;
- (e) Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- (f) Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging 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

- (g) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38)), registered, exempted from registration or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

34. Based upon and in connection with the foregoing conduct, pursuant to 7 U.S.C. § 13a-1 and Section 2(a)(1)(B), 7 U.S.C. § 2(a)(1)(B), NYMEX is hereby restrained, enjoined and prohibited from violating Section 9(e)(1) of the Act and Regulation 1.59(d)(1)(ii), to the extent Section 9(e)(1) of the Act and Regulation 1.59(d)(1)(ii) apply to NYMEX under Section 2(a)(1)(B).

V. CIVIL MONETARY PENALTY

35. Settling Defendants shall pay a joint and several civil monetary penalty in the amount of \$4,000,000 (four million dollars) (the “CMP Obligation”), within ten days of the date of the entry of this Consent Order, provided the joint and several liability of each individual Defendant is capped at the amounts listed below:

Byrnes \$300,000 (three hundred thousand dollars);

Curtin \$200,000 (two hundred thousand dollars).

36. If the CMP Obligation is not paid in full within ten days of the date of entry of this Consent Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

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

38. Acceptance by the Commission of any partial payment of the CMP Obligation shall not be deemed a waiver of Settling Defendants' obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

VI. MISCELLANEOUS PROVISIONS

39. Cooperation: Settling Defendants shall cooperate fully and expeditiously with the Commission, including the Division of Enforcement (the "Division"), in this action, and in any current or future Commission investigation or action related thereto. Settling Defendants shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action. Settling Defendants' cooperation shall continue for a period of five years from

the date of entry of this Order, or until the litigation is concluded, including through the appellate review process, whichever period is longer. As part of such cooperation, Settling Defendants agree to:

- (a) Preserve and produce to the Commission in a responsive and prompt manner, as requested by Division staff, all non-privileged documents, information, and other materials wherever located, including but not limited to audio files, electronic communications, and trading records and data, in the possession, custody, or control of Settling Defendants;
- (b) Comply fully, promptly, completely, and truthfully, subject to any legally recognized privilege, with any inquiries or requests for information and documents by the Commission;
- (c) Identify and authenticate relevant documents and other evidentiary materials, execute affidavits or declarations, and, if applicable, provide a corporate representative to testify completely and truthfully at depositions, trial, and other judicial proceedings, when requested to do so by Division staff;
- (d) Use their best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of NYMEX, if any, regardless of the individual's location and at such a location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including, but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such trial, proceeding, or investigation; and
- (e) Subject to applicable laws and regulations, use their best efforts to assist in locating and contacting any former (as of the time of the request) officer, director, employee, or agent of NYMEX.

40. Notice: All notices required to be given by any provision in this Consent Order shall be sent certified mail, return receipt requested, as follows:

Notice to the Commission:

Manal M. Sultan
Deputy Director, Division of Enforcement
Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005
msultan@cftc.gov

Notice to Byrnes:

Robert L. Herskovits
Herskovits PLLC
1185 Avenue of the Americas, 37th Floor
New York, NY 10036
robert@herskovitslaw.com

Notice to Curtin:

Samuel F. Abernethy
Offit Kurman, P.A.
10 East 40th Street, 35th Floor
New York, NY 10016
sabernehy@offitkurman.com

Notice to NYMEX:

Albert L. Hogan III
Skadden Arps Slate Meagher & Flom LLP
155 N. Wacker Drive
Chicago, IL 60606
Al.hogan@skadden.com

All such notices to the Commission shall reference the name and docket number of this action.

41. Change of Address/Phone: Until such time as Settling Defendants satisfy in full the CMP Obligation as set forth in this Consent Order, Settling Defendants 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.

42. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

43. Invalidation: If any provision of this Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Consent Order and the

application of the provision to any other person or circumstance shall not be affected by the holding.

44. Waiver: The failure of any party to this Consent Order at any time to require performance of any provision of this Consent Order shall in no manner affect the right of the party at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

45. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Settling Defendants to modify or for relief from the terms of this Consent Order.

46. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Settling Defendants, upon any person under their authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Settling Defendants.

47. Authority: Kathleen M. Cronin hereby warrants that she is Senior Managing Director, General Counsel and Corporate Secretary of NYMEX, and that this Consent Order has been duly authorized by NYMEX and she has been duly empowered to sign and submit this Consent Order on behalf of NYMEX.

48. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall

become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other parties, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

49. Contempt: Settling Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings and that in any such proceedings they may not challenge the validity of this Consent Order.

50. Agreements and Undertakings: Settling Defendants shall comply with all of the undertakings and agreements set forth in this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendants William Byrnes, Christopher Curtin, and the New York Mercantile Exchange, Inc.* forthwith and without further notice.

IT IS SO ORDERED on this ____ day of _____, 2020.

Vernon C. Broderick
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

William Byrnes

Date: _____

Approved as to form:

Robert L. Herskovits
Attorney for William Byrnes

Christopher Curtin

Date: _____

Approved as to form:

Samuel F. Abernethy
Attorney for Christopher Curtin

New York Mercantile Exchange, Inc.
Kathleen M. Cronin, Senior Managing Director, General Counsel and Corporate Secretary

Date: _____

Approved as to form:

Albert L. Hogan III
Attorney for New York Mercantile
Exchange, Inc.

Patryk Chudy

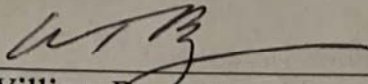
U.S. Commodity Futures Trading Commission

Patryk J. Chudy
David W. MacGregor (admitted *pro hac vice*)
Patrick Daly
Alejandra de Urioste
Gabriella Geanuleas
David C. Newman
James G. Wheaton

Division of Enforcement
140 Broadway, 19th Floor
New York, New York 10005
Phone: 646-746-9700

Date: 07/31/2020

CONSENTED TO AND APPROVED BY:



William Byrnes

Date: 06/02/2020

Approved as to form:

Robert L. Herskovits
Attorney for William Byrnes

Christopher Curtin

Date: _____

Approved as to form:

Samuel F. Abernethy
Attorney for Christopher Curtin

New York Mercantile Exchange, Inc.
Kathleen M. Cronin, Senior Managing Director, General Counsel and Corporate Secretary

Date: _____

Approved as to form:

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Attorney for New York Mercantile
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Attorney for William Byrnes

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Date: _____


CONSENTED TO AND APPROVED BY:

William Byrnes

Date: _____

Approved as to form:

Robert L. Herskovits
Attorney for William Byrnes



Christopher Curtin

Date: JUNE 2, 2020

Approved as to form:

Samuel F. Abernethy
Attorney for Christopher Curtin

New York Mercantile Exchange, Inc.
Kathleen M. Cronin, Senior Managing Director, General Counsel and Corporate Secretary

Date: _____

Approved as to form:

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Attorney for New York Mercantile
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Attorney for William Byrnes

Christopher Curtin

Date: _____

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Date: _____

Approved as to form:

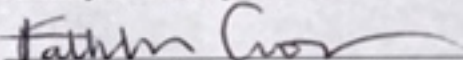
Robert L. Herskovits
Attorney for William Byrnes

Christopher Curtin

Date: _____

Approved as to form:

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Attorney for Christopher Curtin


New York Mercantile Exchange, Inc.

Kathleen M. Cronin, Senior Managing Director, General Counsel and Corporate Secretary

Date: _____

Approved as to form:

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Attorney for New York Mercantile
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