UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Alan F. Dasher,

Respondent.

CFTC Docket No. 11-04

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

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I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Alan F. Dasher ("Respondent") has violated a provision of the Commodity Exchange Act (the "Act" or the "CEA"), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 1 et seq., specifically, Section 4o(1)(B) of the Act, to be codified at 7 U.S.C. § 6o(1)(B). The Commission, therefore, deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing a remedial sanction.

II.

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

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[1] Respondent consents to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy or to enforce the terms of this Order. The Respondent does not

III.

The Commission finds the following:

A. Summary

On January 28, 2010, Dasher maintained powers of attorney to trade commodity futures contracts in two customer accounts. He solicited these customers with representations that he would trade e-mini S&P 500 futures contracts in their accounts based on recommendations from his proprietary algorithmic trading system. On January 28, 2010, at around 11:35 p.m., Dasher began trading recklessly, establishing and exiting the same position over and over again—thousands of times—in the two customer accounts over which he held powers of attorney. None of this trading was recommended by his proprietary system, and both accounts experienced massive losses.

B. Respondent

Alan F. Dasher is a resident of Philadelphia, Pennsylvania. He was registered with the Commission in 1996 and 1997 as an associated person and a commodity trading advisor with his own firm, doing business as AFD Trading. He also was listed as a principal for AFD Trading. Dasher has not been registered with the Commission in any capacity or listed as a principal for any entity registered with the Commission since 1997.

C. Facts

Beginning in or about September 2007, Dasher solicited customers to open managed accounts in which Dasher would trade e-mini S&P 500 futures contracts on their behalf using his proprietary algorithmic trading system. Dasher eventually managed accounts for three customers. He directed each customer to open an account at TransAct Futures, a registered futures commission merchant, and to execute a limited power of attorney authorizing him to purchase and sell futures in each customer's account. Dasher also entered into an "Agreement" with each customer entitling him to a percentage of "all profits" generated in each customer's account, to be determined on a quarterly basis as compensation for his services. The customers deposited approximately $225,000, collectively, into the TransAct Futures' accounts that Dasher traded on their behalf. He regularly communicated with the three customers via telephone and facsimile and traded in their accounts through the Internet. Dasher's management of these accounts provided his primary source of income in 2007 and 2008, when he earned approximately $15,000. Dasher earned no income through his commodity trading advisory services for 2009 or 2010.

From approximately fall 2007 through March 2009, Dasher traded e-mini S&P 500 futures contracts, usually a few days per month, across these three accounts. On days he did trade, he typically traded fewer than 150 contracts. He traded no more than approximately 300 contracts per month. From April 2009 through January 2010, however, Dasher's algorithmic

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consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding.

trading system recommended trading on only one day of one month. On that one trading day in October 2009, Dasher traded fewer than 150 contracts. During this period of limited trading, one of Dasher's three customers closed his account.

Dasher became increasingly concerned that his system was not generating recommendations for trading and, thus, that he was not earning any income from trading. Dasher admitted that, on January 28, 2010, at 11:35 p.m., he "snapped" and began repeatedly trading e-mini S&P 500 futures contracts for the two customer accounts that he still managed. In less than an hour, Dasher bought and sold almost 9,000 e-mini S&P 500 futures contracts, resulting in approximately $112,000 in combined losses for the two customer accounts. During the less than one hour of heavy trading, Dasher recklessly bought and sold the same contracts over and over again. The trading ceased at approximately 12:25 a.m. on January 29, 2010, only because the risk server for TransAct Futures automatically locked the accounts due to the high percentages of the account values that were lost as a result of Dasher's trading activity. Contrary to Dasher's representations to these customers, his proprietary algorithmic trading system did not recommend any of the trades at issue.

D. Legal Discussion—Respondent Violated Section 4o(1)(B) of the Act

Section 4o(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 6o(1)(B), makes it

> unlawful for a commodity trading advisor . . . by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

As set forth above, Dasher was a commodity trading advisor for the two customers whose accounts he was trading on January 28 and 29, 2010. *See* Section 1a(6) of the Act, as amended, to be codified at 7 U.S.C. § 1a(12). Dasher regularly used means or instrumentalities of interstate commerce to communicate with these customers and to conduct trading on their behalf. Further, at or about the time Dasher directed these customers to open accounts over which he would exercise control, he represented that all trading would follow recommendations generated by his proprietary algorithmic trading system. That system, however, did not recommend any of the trading that occurred on January 28 and 29, 2010. Dasher's conduct operated as a fraud in violation of Section 4o(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 6o(1)(B).

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Section 4o(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 6o(1)(B).

V.

OFFER OF SETTLEMENT

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

A. Acknowledges receipt of service of this Order;

B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order;

C. Waives: the filing and service of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; any and all objections to the participation by any member of the Commission's staff in consideration of the Offer; any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Commission's Regulations ("Regulations"), 17 C.F.R. §§ 148.1, *et seq*. (2010), relating to, or arising from, this proceeding; any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and any claim 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;

D. Stipulates that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which the Respondent has consented; and

E. Consents, solely on the basis of the Offer, to entry of this Order that:

1. makes findings by the Commission that Respondent violated Section 4o(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 6o(1)(B);

2. orders Respondent and his successors and assigns to cease and desist from violating Section 4o(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 6o(1)(B);

3. orders that Respondent is prohibited for a period of three years following the date of entry of the Order from engaging, directly or indirectly, in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, as amended, to be codified at 7 U.S.C. § 1a(40)); and

4. orders Respondent and his successors and assigns to each comply with the undertakings consented to in the Offer and set forth below in Part VI of this Order.

Upon consideration, the Commission has determined to accept Respondent's Offer.

VI.

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent and his successors and assigns shall cease and desist from violating Section 4o(1)(B) of the Act, as amended, to be codified at 7 U.S.C. § 6o(1)(B);

2. Respondent is prohibited for a period of three years following the date of entry of this Order, from engaging, directly or indirectly, in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(29) of the Act, as amended, to be codified at 7 U.S.C. § 1a(40)); and

3. Respondent is directed to comply with the following undertakings set forth in the Offer:

(a) Respondent agrees that neither he, nor any of his successors, assigns, or 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 Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and his successors and assigns shall undertake all steps necessary to ensure that all of his agents and/or employees under their authority or control understand and comply with this agreement.

(b) Respondent agrees that, for a period of three years following the date of entry of this Order, he shall not, directly or indirectly:

i. enter into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. 32.1(b)(1) (2010) ("commodity options")), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i) ("forex contracts")) for their own personal account or for any account in which they have a direct or indirect interest;

ii. have any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;

iii. 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 futures, options on commodity futures, commodity options, and/or forex contracts;

iv. solicit, receive, or accept any funds from any person for purposes of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

v. apply for registration or claim exemption from registration with the CFTC in any capacity, and engage in any activity requiring such registration or exemption from registration with the CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010); and/or

vi. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2010)), agent, or any other officer or employee of any person registered, exempted from registration or required to be registered with the CFTC, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010).

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

By the Commission.

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: January 13, 2011