

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

MICHAEL J. LISKIEWICZ,

Respondent.

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)
) **CFTC Docket No: 06-04**
)
)

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

The Commodity Futures Trading Commission (the "Commission") has reason to believe that Michael J. Liskiewicz ("Liskiewicz") has violated Sections 4b(a), 4o(1) and 4m(1) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 6b, 6o(1) and 6m(1) (2002), and Sections 4.20 and 4.21 of the Commission's Regulations ("Regulations"), 17 C.F.R. §§ 4.20 and 4.21 (2005). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Liskiewicz engaged in the violations set forth herein, and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Liskiewicz has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Without admitting or denying the findings of fact in this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, As Amended, Making Findings and Imposing Remedial Sanctions ("Order"), Liskiewicz acknowledges service of this Order. Liskiewicz consents to the use of the findings in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Liskiewicz does not consent to the use of the Offer, this Order, or the findings consented to in the Offer or this Order, as the sole basis for any proceeding brought by the Commission, other than a proceeding in bankruptcy or to enforce the terms of the Order. Nor does Liskiewicz 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.

III.

The Commission finds the following:

A. SUMMARY

Beginning in the early months of 2000 and continuing through the first half of 2004, Liskiewicz, acting as a commodity pool operator, solicited individuals to invest in a commodity futures pool. In total, he raised \$192,975 from nine investors for the commodity pool he was operating. He told prospective investors that the pool would trade S & P E-mini futures contracts. Liskiewicz deposited the pool participants' funds into various personal or family-related bank accounts, and subsequently transferred some of the pool participants' money to trading accounts in his own name, rather than in the name of a commodity pool.

Liskiewicz misappropriated some of those funds to use for his personal benefit and expenses and otherwise lost money trading. Liskiewicz, however, sent false reports to the pool participants showing that he was trading profitably on their behalves and that the pool participants' net asset values were increasing. By his actions, Liskiewicz committed fraud in violation of Sections 4b(a)(2) and 4o(1) of the Act. Moreover, he was required to be registered with the Commission as a commodity pool operator, which he was not. As a result, Liskiewicz violated Section 4m(1) of the Act.

Liskiewicz also operated his commodity pool in violation of the Commission's Regulations. Liskiewicz failed to operate the commodity pool as a legal entity separate from himself; he received commodity pool funds in his own name rather than in the name of the pool; he commingled pool participants' funds; and he failed to provide the required Disclosure Documents to pool participants and receive a signed acknowledgment from the pool participants of receipt of such document. By these actions, he violated Sections 4.20 and 4.21 of the Regulations.

B. RESPONDENT

Michael J. Liskiewicz, resides in Duluth, Minnesota. Liskiewicz has never been registered with the Commission in any capacity.

IV.

FACTS

Liskiewicz developed his commodity pool business in 2000 after serving a criminal sentence for investment fraud. Following his release from prison, Liskiewicz began soliciting prospective participants to invest in a commodity pool that would trade S&P E-mini futures contracts. Nine investors ultimately gave Liskiewicz a total of \$192,975 to trade on their behalves. The pool participants wired their funds to Liskiewicz's personal bank accounts, or bank accounts in the names of Liskiewicz's wife or deceased father. After receiving the funds, Liskiewicz sent false email statements to the pool participants purporting to show healthy profits

from futures trading. Contrary to these representations, Liskiewicz had not made any profitable futures trades when he issued these statements to the pool participants, and, in fact, he had lost virtually all of the money he traded. Moreover, Liskiewicz was using money from these same accounts for personal expenditures such as gambling, movie rentals, hardware, and to obtain cash.

Throughout the time Liskiewicz was soliciting pool participants, he was not registered with the Commission as a commodity pool operator, nor did he file with the Commission or the National Futures Association a written notice stating that he was exempt from registration as a commodity pool operator.

Additionally, Liskiewicz failed to operate his commodity pool as a legal entity separate from himself. As stated above, he commingled pool participant funds with his personal funds. He also did not provide required Disclosure Documents, nor did he provide a notice that he was exempt from registration.

V.

LEGAL DISCUSSION

A. Liskiewicz Violated Section 4b of the Act

1. Misappropriation

Section 4b(a)(2)(i) of the Act prohibits any person from cheating or defrauding or attempting to cheat or defraud other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made, or to be made, for or on behalf of any other person. Section 4b(a)(2)(iii) prohibits any person from willfully deceiving or attempting to deceive other persons in connection with commodity futures contracts.

As detailed above, Liskiewicz misappropriated participants' funds by using some of the funds to pay for such personal items as gambling expenses, movie rentals and purchases at a hardware store. Misappropriation of investors' funds constitutes "willful and blatant" fraudulent activity that violates the anti-fraud provisions of the Act. *CFTC v. Noble Wealth Data Information Services, Inc.*, 90 F.Supp.2d 676, 687 (D. Md. 2000), *aff'd in part, rev'd in part*, *CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002); *See also In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,701 at 48,315 (CFTC July 19, 1999) (respondents violated Section 4b of the Act by surreptitiously retaining money in their own bank accounts that should have been traded on behalf of the investors), *aff'd in relevant part*, *Slusser v. CFTC*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,124 at 49,861 (7th Cir. 2000); *CFTC v. Morse*, 762 F. 2d 60, 62 (8th Cir. 1985) (defendant's use of customer funds for personal use violated Section 4b of the Act); *CFTC ex rel Kelley v. Skorupskas*, 605 F. Supp. 923, 932 (E.D. Mich. 1985) (same). Accordingly, Liskiewicz's misappropriation of pool participants' funds violated Sections 4b(a)(2)(i) and (iii) of the Act.

2. False Statements

Section 4b(a)(2)(ii) of the Act specifically prohibits any person from willfully making, or causing to be made to other persons any false report or statement, or willfully to enter or cause to be entered for such person any false record. Liskiewicz sent monthly email statements to pool participants showing healthy profits, when, in fact, Liskiewicz's trading of commodity futures was losing money. He sent these emails to hide his trading losses and misappropriation of funds. These actions are violations of Section 4b(a)(2)(ii) the Act. *CFTC v. McLaurin*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,768 (N.D. Ill. 1996) (finding that defendant submitted fraudulent reports and statements in violation of the Act); *accord, CFTC v. Rosenberg*, 85 F.Supp.2d 424, 448 (D. New Jersey 2000). *See also Skorupskas*, 605 F. Supp. at 932-33 (E.D. Mich. 1985) (defendant violated Section 4b(a) of the Act by issuing false monthly statements to customers).

B. Liskiewicz Violated Section 4o of the Act

Section 1a(5) of the Act defines a commodity pool operator ("CPO") as:

any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery or commodity option on or subject to the rules of any contract market.

7 U.S.C. § 1a(5)(2002). By running a business in which investors were to receive a share of commodity futures trading profits, Liskiewicz engaged in a business in the nature of an investment trust or syndicate. As set forth above, Liskiewicz solicited and accepted funds for the purpose of trading commodity futures on or subject to the rules of various contract markets. Accordingly, Liskiewicz was a CPO. *Skorupskas*, 605 F. Supp. at 932.

Section 4o(1)(A) of the Act makes it unlawful for a CPO to employ any device, scheme or artifice to defraud any participant or prospective participant. Section 4o(1)(B) of the Act makes it unlawful for a CPO to engage in any transaction, practice or course of business that operates as a fraud or deceit upon any participant or prospective participant. Unlike Sections 4b(a) and 4o(1)(A) of the Act, the language of Section 4o(1)(B) does not require "knowing" or "willful" conduct as a prerequisite for establishing liability. In this regard, the Commission has held that "[a]lthough scienter must be proved to establish a violation of Section 4b and 4o(1)(A), it is not necessary to establish a violation of Section 4o(1)(B)." *In re Kolter*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,262 at 42,198 (CFTC Nov. 8, 1994), *citing Messer v. E.F. Hutton & Co.*, 847 F.2d 673, 678-79 (11th Cir. 1988).

Sections 4o(1)(A) and (B) apply to all CPOs, whether registered, required to be registered, or exempted from registration. *Skorupskas*, 605 F. Supp. at 932; *CFTC v. Vartuli*, 228 F.3d 94, 103 (2d Cir. 2000) (unregistered commodity trading advisor liable under Section 4o(1)). The same fraudulent conduct that violates Section 4b(a) as set forth above also violates Section 4o(1). *Skorupskas*, 605 F. Supp. at 932-33. Accordingly, Liskiewicz violated Section 4o(1) of the Act.

C. Liskiewicz Violated Section 4m(1) of the Act

Section 4m(1) of the Act provides that it is unlawful for any CPO, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as a CPO. Liskiewicz accepted participants' funds by mail and by wire transfers for the purpose of investing in a commodity pool, and used the mails, e-mail and facsimiles to send false performance statements to some participants of the pool. In doing so without being registered as a CPO, he violated Section 4m(1) of the Act.

D. Liskiewicz Failed To Comply With Commission Regulations 4.20 and 4.21

Section 4.20 of the Regulations identifies several activities in which CPOs are prohibited from engaging. Liskiewicz violated Section 4.20 by failing to operate the commodity pool as a legal entity separate from himself, by receiving commodity pool funds in his own name rather than in the name of the pool, and by commingling investor funds with his personal accounts.

Furthermore, pursuant to Section 4.21(a) of the Regulations, a CPO is required to provide Disclosure Documents to prospective pool participants containing the information set forth in Section 4.24 of the Regulations and to receive a written acknowledgement of receipt from the participants. Liskiewicz violated this Regulation in that he never provided any form of Disclosure Document to any of the pool participants before or after they invested funds with him.

VI.

OFFER OF SETTLEMENT

Liskiewicz submitted an Offer of Settlement in which, without admitting or denying the findings herein, and prior to any adjudication on the merits, he acknowledges service of the Order, admits jurisdiction of the Commission with respect to the matters set forth in this Order and for any action or proceeding brought or authorized by the Commission in bankruptcy or based upon violations or for enforcement of the Order; waives service of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, any claim of double jeopardy based on the institution of this proceeding or the entry of any order imposing a civil monetary penalty or other relief, and all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2005), relating to, or arising from, this action.

Liskiewicz stipulates that the record basis upon which this Order is entered consists solely of this Order. Liskiewicz consents to the Commission's issuance of this Order, which makes findings, as set forth herein, including findings that Liskiewicz violated Sections 4b(a), 4o(1) and 4m(1) of the Act, and Sections 4.20 and 4.21 of the Regulations, and orders that Liskiewicz cease and desist from violating the provisions of the Act and Regulations he has been found to have violated, holds him liable for a civil monetary penalty of \$240,000.00, permanently bans him from trading for himself or others, and requires him to comply with the undertakings set forth below.

VII.

FINDINGS OF VIOLATIONS

Solely on the basis of the consent evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Liskiewicz violated Sections 4b(a)(2)(i), (ii) and (iii), 4o(1) and 4m(1) of the Act, and Sections 4.20 and 4.21 of the Regulations.

VIII.

ORDER²

Based upon the consent of Liskiewicz to the entry of this Order and the findings herein that Liskiewicz violated Sections 4b(a)(2)(i), (ii) and (iii), 4o(1) and 4m(1) of the Act, and Sections 4.20 and 4.21 of the Regulations, the Commission deems it appropriate and in the public interest to impose remedial sanctions against Liskiewicz, and accordingly:

- A. **IT IS HEREBY ORDERED** that Liskiewicz shall cease and desist from violating Sections 4b(a)(2)(i), (ii) and (iii), 4o(1)(A) and (B) and 4m(1) of the Act and Sections 4.20 and 4.21 of the Regulations;
- B. **IT IS HEREBY ORDERED** that Liskiewicz shall be liable for a civil monetary penalty of Two Hundred and Forty Thousand Dollars (\$240,000), including post-judgment interest. Liskiewicz shall pay such civil monetary penalty by electronic funds transfer, or by United States postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Liskiewicz and the name and docket number of the proceeding; Liskiewicz shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, U.S Commodity Futures Trading Commission, at the following address: Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581;

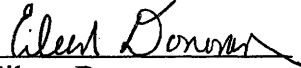
² Liskiewicz's obligations to injured customers were discharged in a bankruptcy proceeding.

- C. **IT IS HEREBY FURTHER ORDERED** that Liskiewicz is permanently prohibited from the entry date of this Order from trading for others or himself on or subject to the rules of any registered entity and all registered entities shall refuse Liskiewicz all privileges thereon; and
- D. **IT IS HEREBY FURTHER ORDERED** that Liskiewicz shall comply with the following undertakings:
1. Liskiewicz shall not apply for registration or seek exemption from registration with the Commission in any capacity, except as provided for in Section 4.14(a)(9) of the Regulations and shall not engage in any activity requiring such registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Regulations, or act as a principal, agent, officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Section 4.14(a)(9) of the Regulations;
 2. Neither Liskiewicz, nor any of his agents or employees under his authority or control, shall take any action or make any public statements denying, directly or indirectly, any finding 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 Liskiewicz's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party.

The provisions of this Order shall be effective on this date. A copy of this Order shall be served on all contract markets, and on the National Futures Association.

BY THE COMMISSION.

Dated: June 12 2006


Eileen Donovan
Acting Secretary to the Commission
Commodity Futures Trading Commission