UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:	)	
MCVEAN TRADING & INVESTMENTS, LLC, CHARLES DOW MCVEAN, SR., MICHAEL J. WHARTON, and SAMUEL C. GILMORE,	)	**CFTC Docket No. 17 -15**
Respondents.	)	

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

I.

The Commodity Futures Trading Commission ("Commission" or "CFTC") has reason to believe that Respondents McVean Trading & Investments, LLC ("MTI"), Charles Dow McVean, Sr. ("McVean"), Michael J. Wharton ("Wharton"), and Samuel C. Gilmore ("Gilmore") (collectively, "Respondents") violated the Commodity Exchange Act (the "Act" or "CEA") and Commission Regulations ("Regulations"). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents 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, Respondents have submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions ("Order") and acknowledge service of this Order.[1]

[1] Respondents consent to the entry of this Order and 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 Respondents do not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents

III.

The Commission finds the following:

A. SUMMARY

In two consecutive delivery months during the winter of 2012-2013, McVean in December 2012, and McVean and Wharton in February 2013, each acting individually and on behalf of MTI, accumulated long live cattle positions in MTI customer and house accounts that were at or near the spot month position limits imposed by the Chicago Mercantile Exchange Inc. ("CME")[2] and then secretly increased their positions by directing and paying four cattle feedyards to buy and hold as directed hundreds of additional live cattle futures contracts in the feedyards' trading accounts. While these additional futures contracts were reflected in publicly available "open interest" data showing the number of contracts outstanding for each contract month, the fact that McVean and Wharton controlled them was not publicly known.

Market participants, including live cattle traders with open short positions, monitor open interest data and assume others comply with position limits; they can therefore assess the level of market participation and the number of holders of short and long positions, though not their identities. As a result of McVean's and Wharton's concealment of their control over long positions in feedyard accounts, live cattle market participants saw wider market interest, participation, and fragmentation on the long side of the market than actually existed.

By engaging in this conduct, McVean and Wharton violated Section 6(c)(1) of the Act[3] and Regulation 180.1.[4] MTI is liable for McVean's and Wharton's violations of Section 6(c)(1) of the Act and Regulation 180.1 as their principal.

Additionally, by engaging in this conduct, McVean and Wharton exceeded the spot month position limits imposed by CME rules: 450 contracts in the beginning, and 300 contracts at the end, of the delivery period for the live cattle contract. McVean's total live cattle futures position, including contracts he controlled in MTI customer and house accounts and in feedyard accounts, exceeded CME spot month position limits for live cattle futures contracts on at least 27 trading days in December 2012 and February 2013 by amounts ranging from 12 to 1,234 contracts, in violation of Section 4a(e) of the Act.[5] Wharton's total live cattle futures position, including contracts he controlled in MTI customer and house accounts and in a feedyard's account, exceeded CME spot month position limits for live cattle futures contracts on at least 15

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

[2] CME is a wholly owned subsidiary of CME Group, Inc., a registered entity as defined in Section 1a(29) of the Act, and a designated contract market for trading live cattle futures contracts pursuant to Section 5 of the Act.

[3] 7 U.S.C. § 9(1) (2012).

[4] 17 C.F.R. § 180.1 (2017).

[5] 7 U.S.C. § 6a(e) (2012).

trading days in February 2013 by amounts ranging from 205 to 436 contracts, in violation of Section 4a(e) of the Act. MTI is liable for McVean's and Wharton's violations of Section 4a(e) of the Act as their principal, while Gilmore, a long-time consultant for MTI, aided and abetted McVean's violation of Section 4a(e) of the Act and is therefore liable for that violation.

Finally, McVean and Wharton committed reporting violations by failing to disclose their control over positions in the feedyard accounts. McVean and Wharton each trades sufficiently large numbers of live cattle futures contracts that he is considered a "reportable trader" and is required by Commission Regulations periodically to file a "Statement of Reporting Trader" on CFTC Form 40 identifying all futures trading he controls, whether in his own name or in another's name. During the relevant period, McVean and Wharton each filed Form 40s with the Commission that failed to disclose their control over trading in the feedyard accounts, which concealed from the Commission the full extent and potential impact of their trading activities, in violation of Section 4i of the Act[6] and Regulation 18.04.[7]

B. RESPONDENTS

Respondent **McVean Trading & Investments, LLC** was founded in 1986 and since 2001 has been a Delaware company located and doing business in Memphis, Tennessee.[8] MTI has been registered with the Commission as a futures commission merchant ("FCM") since September 11, 1986, and it has been listed with the National Futures Association ("NFA") as a swap firm since February 22, 2013. MTI primarily trades agricultural products, including live cattle futures contracts traded on CME, for its own proprietary, or "house," accounts and for its more than 4,000 customer accounts.

Respondent **Charles Dow McVean, Sr.** has been trading futures contracts for more than 40 years. He founded MTI and serves as its Chairman and CEO. He resides in Memphis, Tennessee. McVean has been registered with the Commission as an associated person ("AP") of MTI since September 11, 1986, and he has been listed with NFA as a swap AP of MTI since February 22, 2013. McVean trades sufficiently large numbers of live cattle futures contracts on CME that he is considered a reportable trader in that contract and, as a result, must file with the Commission periodic Form 40s that identify all futures trading he controls, whether in his own name or in another's name.

Respondent **Michael J. Wharton** has been trading futures contracts for more than 30 years. He is the President of MTI and has worked for the company since its founding. He resides in Memphis, Tennessee. Wharton has been registered with the Commission as an AP of MTI since October 3, 1986, and he has been listed with NFA as a swap AP of MTI since

[6] 7 U.S.C. § 6i (2012).

[7] 17 C.F.R. § 18.04 (2017).

[8] Prior to 2001, McVean Trading was known as McVean Trading Company, a Tennessee company formed on August 7, 1986; McVean Trading & Investments Inc., a Tennessee corporation incorporated on August 7, 1986; and McVean Trading & Investments, LLC, a Tennessee company formed in 1998. These entities merged over time and ultimately became McVean Trading & Investments, LLC, a Delaware company authorized to do business in Tennessee, in 2001.

February 22, 2013. Wharton trades sufficiently large numbers of live cattle futures contracts on CME that he is considered a reportable trader in that contract and, as a result, must file with the Commission periodic Form 40s that identify all futures trading he controls, whether in his own name or in another's name.

Respondent **Samuel C. Gilmore** has worked in the cattle industry for more than 30 years and works as a consultant for MTI. He resides in Germantown, Tennessee. Gilmore was registered with the Commission as an AP of MTI from May 15, 2007 until January 11, 2012. He also was registered with the Commission as an AP of Rosenthal Collins Group LLC ("Rosenthal"),[9] a registered FCM, from March 20, 2008 until July 30, 2013, and as an AP of SCG Trading LLC from May 14, 2013 until April 30, 2015.

Prior Commission Action: McVean, Wharton, and MTI were the subjects of a previous Commission enforcement action alleging their violation of CME position limits for live cattle futures contracts. In 1993, solely on the basis of the consent evidenced by their Offers of Settlement, and without any adjudication on the merits, the Commission found that MTI, McVean, Wharton, and other MTI-affiliated persons violated Sections 4a(e), 4g(a), and 6(c) of the Act, 7 U.S.C. §§ 6a(e), 6g(a), and 9 (Supp. IV 1992 and 1988), and Commission Regulations 18.04(a) and 166.2, 17 C.F.R. §§ 18.04(a) and 166.2 (1993), and that MTI and McVean also violated Commission Regulations 1.35(a-1)(1), 17.00(a), and 17.01(b), 17 C.F.R. §§ 1.35(a-1)(1), 17.00(a), and 17.01(b) (1993).[10] MTI, McVean, Wharton, and the other Respondents agreed to cease and desist from their alleged violations and pay civil monetary penalties totaling $2,220,000, with MTI and McVean each paying $875,000 and Wharton paying $250,000.

C. FACTS

1. The Live Cattle Futures Contract Traded on CME

The live cattle futures contract traded on CME consists of a legally binding agreement for a buyer holding a long futures position to accept delivery, and a seller holding a short futures position to make delivery, of a standardized quantity of live cattle meeting certain specifications.[11] Live cattle futures are traded for delivery during six contract months each calendar year: February, April, June, August, October, and December.[12] The price of live cattle

[9] Rosenthal is an Illinois limited liability company with its principal place of business in Chicago, Illinois. It has been registered with the Commission as an FCM since 1979 and is MTI's clearing FCM.

[10] *See In re McVean*, CFTC Docket No. 94-4, 1993 WL 445357 (CFTC Nov. 2, 1993).

[11] Under CME specifications applicable to the December 2012 and February 2013 live cattle futures contracts, a single contract consisted of 40,000 pounds, or 400 hundredweight, of 55% Choice grade steers, 45% Select grade steers, yield grade 3 as defined by the USDA, with no individual animal weighing less than 1,050 pounds or more than 1,500 pounds. A single 40,000 pound live cattle futures contract equates to as many as approximately 38 head of cattle.

[12] The live cattle futures contract is physically settled. When the contract expires, a buyer still holding a long futures position must take delivery, and a seller still holding a short futures position must make delivery, of physical live cattle meeting CME specifications for the contract. Physical delivery on a live

futures contracts is not set by CME, but negotiated by traders electronically on CME's Globex platform or, historically, on the CME floor in Chicago, Illinois.[13] The minimum price fluctuation, or tick size, for trading live cattle futures contracts is $0.00025 per pound, equivalent to $10 per futures contract. In practice, the live cattle futures contract is quoted in dollars per hundredweight.

Live cattle futures trading is subject to the position limits set forth in the CME Rulebook. According to CME Rules 10102.E and 559 in effect for the December 2012 and February 2013 contracts, two position limits were effective during the delivery (or "spot") month of the contract: an initial limit of 450 contracts long or short, effective at the close of business on the first business day after the first Friday of the contract month ("450-contract spot month limit"), and a second limit of 300 contracts long or short, effective at the close of business on the business day immediately preceding the last five business days of the contract month ("300-contract spot month limit"). Traders holding or controlling large numbers of live cattle futures contracts deliverable in the spot month for the December 2012 and February 2013 contracts were required to reduce the number of contracts they controlled to be at or below these limits consistent with this schedule.

Live cattle traders are privy to publicly available daily trading volume and open interest data showing the total number of outstanding positions in live cattle contracts traded on CME. Traders use this information, along with the established CME position limits for live cattle trading and their estimates of outstanding hedge exemptions, to assess the interest, participation, and fragmentation of trading in a particular contract month. In other words, traders can estimate whether many or few traders of a particular live cattle contract remain and how quickly traders are offsetting their positions during the spot month, and they can adjust their trading strategies accordingly.

2. "Swap Agreements" Between MTI and Cattle Feedyards

Gilmore, a long-time consultant for MTI and McVean and an AP of Rosenthal from March 20, 2008 until July 30, 2013, for many years has advised cattle feedyards on hedging in their futures trading accounts at Rosenthal. At McVean's request, Gilmore proposed a deal to certain cattle feedyards he advised: if the feedyards bought and held live cattle futures contracts in the spot month in their own trading accounts as directed, then MTI would pay the feedyards $.25 per hundredweight, or $100 per 40,000 pound contract, for each futures contract they bought. Gilmore gave the selected feedyards contracts to sign and instructed them to open new futures trading accounts at Rosenthal. At least four cattle feedyards ("Feedyard A," "Feedyard B," "Feedyard C," and "Feedyard D"), all long-time Gilmore clients, agreed to the proposal, opened new futures trading accounts through the Rosenthal AP specified by Gilmore, and signed

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cattle futures contract usually accounts for less than 1% of the total futures volume, but the possibility of physical delivery on the contract is expected to cause the cash and futures markets to converge, or meet, at contract expiration.

[13] CME closed all but a handful of its futures trading pits in July 2015. The live cattle futures pit was among the pits closed, ending open outcry for the live cattle futures contract.

the contracts with MTI. Either McVean, as MTI's Chairman, or MTI's Chief Financial Officer ("CFO") signed the contracts on MTI's behalf.

The contracts were entitled "Swap Agreement" but served only as the mechanism by which MTI paid the feedyards for putting on a long futures position controlled by McVean or Wharton, typically beginning when the 450-contract spot month limit became effective. This enabled McVean and Wharton to exceed spot month position limits and conceal their control over excess positions not only from the live cattle market, but also from the Commission, since McVean and Wharton had not disclosed their control over trading in feedyard accounts in their Form 40s.

McVean and Wharton controlled all the material terms of the live cattle futures contracts purchased by the feedyards pursuant to the "swap agreements," including, for example, the contract month and number of contracts purchased, the price at which the feedyards bought the contracts, the length of time the positions remained open, how and when the long positions were offset, and, in McVean's case, even which Rosenthal AP could place the trades.[14] In exchange for their agreement with the plan, MTI paid the feedyards a price dictated by McVean and reflected in the "swap agreements": $.25 a hundredweight, or $100 per 40,000 pound contract.

In practice, when McVean decided to establish a long live cattle position in a feedyard account, Gilmore relayed by telephone McVean's instructions to a feedyard to buy the positions in the feedyard's newly opened account at Rosenthal. Similarly, Wharton placed his orders to a feedyard by telephone, either personally or through his trading assistant. After purchasing the contracts as instructed, the feedyard confirmed the number and price of live cattle futures contracts purchased to McVean, through Gilmore, or to Wharton or his assistant. Typically the next day, MTI's accounting staff sent the feedyard a "notice of execution" document signed by MTI's CFO and showing the number and price of contracts the feedyard had purchased, marked up by $.25 a hundredweight, or $100 per 40,000 pound contract. When McVean and Wharton decided to exit the positions, Gilmore relayed McVean's instructions by telephone, while Wharton delivered his instructions by telephone personally or through his assistant.

The feedyards bought live cattle futures not to transfer any preexisting market risks, but solely because MTI paid them $.25 per hundredweight, or $100 per 40,000 pound contract, to do so in accordance with McVean's or Wharton's instructions. The typical "swap agreement" stated that MTI would "assume the price risk associated with a long position in the specified commodity," and in practice, MTI did assume that risk: whether the price of the futures contracts rose or fell, the feedyards always ended up with their fee of $.25 per hundredweight, or $100 per 40,000 pound contract. MTI also paid the feedyards the initial margin required for the number of futures contracts purchased and gave the feedyards additional margin if the value of a futures position decreased.

[14] Gilmore received a portion of the Rosenthal AP's commissions for these trades via personal check.

3. McVean's Violations in the December 2012 Live Cattle Futures Contract

Under CME rules, the 450-contract spot month limit for the December 2012 live cattle futures contract became effective on December 12, 2012, and the 300-contract spot month limit became effective on December 21, 2012. Accordingly, absent a hedge exemption, no trader was allowed to control more than 450 December 2012 live cattle contracts, long or short, between December 12 and 20, 2012, and, absent a hedge exemption, no trader was allowed to control more than 300 December 2012 live cattle contracts, long or short, between December 21, 2012 and the expiration of the contract on December 31, 2012.

By December 10, 2012, McVean was long 447 December 2012 live cattle contracts in trading accounts he controlled, according to Form 40s he filed with the Commission. McVean thus had room to add only 3 more contracts in the MTI customer and house accounts he traded before hitting the 450-contract spot month limit. That same day, Gilmore called Feedyards A and B on behalf of McVean to arrange a so-called swap, directing Feedyards A and B each to purchase 200 December 2012 live cattle contracts for the feedyards' futures accounts at Rosenthal. Gilmore specified the quantity and price of futures contracts to buy and the type of order to place. Feedyards A and B purchased the contracts as instructed and reported their transactions back to Gilmore.

The next day, on December 11, 2012, MTI sent Feedyards A and B "notice of execution" documents signed by MTI's CFO. Both documents listed the trade date as December 10, 2012, the commodity as December 2012 live cattle, and the quantity as the number of futures contracts purchased. Both documents also listed the "fixed price" as the prices at which the feedyards purchased the futures contracts, plus $.25 per hundredweight. MTI subsequently wired each feedyard the margin funds required by CME to hold 200 December 2012 live cattle contracts. Feedyards A and B thereafter maintained, adjusted, and eventually offset their positions as directed by McVean, through communications received from Gilmore.

McVean's total long live cattle futures position, comprised of contracts in the MTI customer and house accounts he controlled and in the accounts of Feedyards A and B, exceeded CME spot month position limits for live cattle futures contracts on at least 12 trading days in December 2012 by amounts ranging from 12 to 397 contracts as follows:

Date	12/10	12/11	12/12	12/13	12/14	12/17	12/18	12/19	12/20	12/21	12/24	12/26
Limit	**450**									**300**		
McVean's Reported Accounts	447	447	447	447	447	443	447	342	313	300	286	262
Feedyard A Account	200	200	200	200	200	200	200	200	150	125	85	0
Feedyard B Account	200	200	200	200	200	200	200	200	150	125	100	50
McVean's Total Position	847	847	847	847	847	843	847	742	613	550	471	312
McVean Over Limit By	**397**	**397**	**397**	**397**	**397**	**393**	**397**	**292**	**163**	**250**	**171**	**12**

By engaging in this conduct, McVean intentionally or recklessly created a false appearance of wider interest, participation, and fragmentation on the long side of the December 2012 contract during the spot month than actually existed. The total positions McVean controlled accounted for as much as 10% of the open interest for the December 2012 live cattle futures contract during the delivery period, approximately double what his control would have been absent the positions in feedyard accounts.

4. McVean's and Wharton's Violations in the February 2013 Live Cattle Futures Contract

Under CME rules, the 450-contract spot month limit for the February 2013 live cattle futures contract became effective on February 4, 2013, and the 300-contract spot month limit became effective on February 21, 2013. Accordingly, absent a hedge exemption, no trader was allowed to control more than 450 February 2013 live cattle positions, long or short, between February 4 and 20, 2013, and, absent a hedge exemption, no trader was allowed to control more than 300 February 2013 live cattle positions, long or short, between February 21, 2013 and the expiration of the contract on February 28, 2013.

On February 4, 2013, as the 450-contract spot month limit for the February 2013 live cattle futures contract became effective, McVean and Wharton were at or near the position limit in the trading accounts they respectively controlled, according to their respective Form 40 reports filed with the Commission. McVean was long 445 February 2013 live cattle contracts in the MTI customer and house accounts he traded, 5 shy of the limit. Meanwhile, Wharton was long 450 February 2013 live cattle contracts in the MTI customer and house accounts he traded and had therefore hit the position limit.

McVean and Wharton secretly increased their futures positions using the feedyard accounts. On various days between January 31 and February 7, 2013, McVean, through Gilmore, directed Feedyards A, B, and C to purchase a total of 400, 440, and 400 February 2013 live cattle contracts in their respective futures accounts at Rosenthal. As in December, Gilmore specified the quantity and price of futures contracts to buy. Feedyards A, B, and C purchased the contracts as directed and reported their transactions back to Gilmore. Similarly, on February 4 and 7, 2013, Wharton, directly or through his assistant, placed orders with Feedyard D that he knew or should have known would result in Feedyard D purchasing a total of 445 February 2013 live cattle contracts in its futures account. Feedyard D purchased the contracts as instructed and reported its transactions back to Wharton.

MTI sent Feedyards A, B, C, and D "notice of execution" documents signed by MTI's CFO that corresponded to the futures contracts they purchased. Each "notice of execution" document listed the trade date on which McVean, through Gilmore, or Wharton, directly or through his assistant, directed the feedyard to purchase the live cattle contracts, the commodity as February 2013 live cattle, and the quantity as the number of futures contracts purchased. Each document also listed the "fixed price" as the prices at which the feedyards purchased the futures contracts, plus $.25 per hundredweight. MTI subsequently wired all four feedyards the margin funds required by CME to hold the number of February 2013 contracts they had purchased, and the feedyards thereafter maintained, adjusted, and eventually offset their positions as directed by McVean, through Gilmore, or Wharton or his assistant.

McVean's total long live cattle futures position, comprised of contracts in the MTI customer and house accounts he controlled and in the accounts of Feedyards A, B, and C, exceeded CME spot month position limits for live cattle futures contracts on at least 15 trading days in February 2013 by amounts ranging from 108 to 1,234 contracts as follows:

Date	**2/4**	**2/5**	**2/6**	**2/7**	**2/8**	**2/11**	**2/12**	**2/13**	**2/14**	**2/15**	**2/19**	**2/20**
Limit	**450**											
McVean's Reported Accounts	445	370	445	444	443	443	443	443	443	438	434	300
Feedyard A Account	400	400	400	400	400	400	400	400	400	400	200	200
Feedyard B Account	400	400	400	440	440	440	440	440	440	440	440	440
Feedyard C Account	400	400	400	400	400	400	400	400	400	298	200	200
McVean's Total Position	1645	1570	1645	1684	1683	1683	1683	1683	1683	1576	1274	1140
McVean Over Limit By	**1195**	**1120**	**1195**	**1234**	**1233**	**1233**	**1233**	**1233**	**1233**	**1126**	**824**	**690**

Date	2/21	2/22	2/25
Limit	**300**		
McVean's Reported Accounts	292	217	108
Feedyard A Account	0	0	0
Feedyard B Account	300	300	300
Feedyard C Account	0	0	0
McVean's Total Position	592	517	408
McVean Over Limit By	**292**	**217**	**108**

Wharton's total long live cattle futures position, including contracts in the MTI customer and house accounts he controlled and in Feedyard D's account, exceeded CME spot month position limits for live cattle futures contracts on at least 15 trading days in February 2013 by amounts ranging from 205 to 436 contracts as follows:

Date	2/4	2/5	2/6	2/7	2/8	2/11	2/12	2/13	2/14	2/15	2/19	2/20
Limit	**450**											
Wharton's Reported Accounts	450	450	433	432	431	431	441	441	435	435	300	300
Feedyard D Account	400	400	400	445	445	445	445	445	445	445	445	445
Wharton's Total Position	850	850	833	877	876	876	886	886	880	880	745	745
Wharton Over Limit By	**400**	**400**	**383**	**427**	**426**	**426**	**436**	**436**	**430**	**430**	**295**	**295**

Date	2/21	2/22	2/25
Limit	**300**		
Wharton's Reported Accounts	300	300	300
Feedyard D Account	300	300	205
Wharton's Total Position	600	600	505
Wharton Over Limit By	**300**	**300**	**205**

By engaging in this conduct, McVean and Wharton intentionally or recklessly created a false appearance of wider interest, participation, and fragmentation on the long side of the February 2013 contract during the spot month than actually existed. The total positions that McVean controlled accounted for as much as 23% of the open interest for the February 2013 live cattle futures contract during the delivery period, approximately four times what his control would have been absent the positions in feedyard accounts. The total positions that Wharton controlled accounted for as much as 20% of the open interest during the delivery period, approximately double what his control would have been absent the positions in feedyard accounts.

5. McVean's and Wharton's Form 40 Submissions

Reportable traders such as McVean and Wharton are required to file a "Statement of Reporting Trader" on Form 40 that identifies, among other things, all futures trading they control, whether in their own names or in another's name, whenever the Commission requests a Form 40. In 2011 and again in 2013, the Commission issued McVean a request for a Form 40. In response to each request, McVean filed a Form 40 with the Commission but failed to disclose his control over futures trading in the accounts of Feedyards A, B, or C. In 2012, the Commission issued Wharton a request for a Form 40. In response, Wharton filed a Form 40 with the Commission but failed to disclose his control over futures trading in the account of Feedyard D.

IV.

LEGAL DISCUSSION

A. Section 6(c)(1) of the Act and Regulation 180.1 Prohibit the Use or Employment of Any Manipulative or Deceptive Device

Section 6(c)(1), added by the Dodd-Frank Act of 2010, broadly makes it unlawful for any person:

> …directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate….[15]

Regulation 180.1, issued by the Commission in 2011 pursuant to Section 6(c)(1), states, in relevant part:

> It shall be unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly: (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud;….[16]

"Section 6(c)(1) and final Rule 180.1 augment the Commission's existing authority to prohibit fraud and manipulation."[17]

Case law and Commission precedent interpreting Section 6(c)(1) of the Act and Regulation 180.1 are sparse, due to the provisions' relative infancy. However, analogous securities law provisions provide guidance. "The language of CEA section 6(c)(1), particularly the operative phrase 'manipulative or deceptive device or contrivance,' is virtually identical to the terms used in section 10(b) of the Securities Exchange Act of 1934 ('Exchange Act')."[18] Given that similarity, the Commission sought to model Regulation 180.1 after SEC Rule 10b-5[19] and lend it "a broad, remedial reading, embracing the use or employment, or attempted use or employment, of any manipulative or deceptive contrivance for the purpose of impairing, obstructing, or defeating the integrity of the markets subject to the jurisdiction of the Commission."[20] Accordingly, "CEA section 6(c)(1) and final Rule 180.1, like Exchange Act

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[15] 7 U.S.C. § 9(1) (2012).

[16] 17 C.F.R. § 180.1(a)(1) (2017).

[17] *Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation* [Final Rules], 76 Fed. Reg. 41,398, 41,401 (CFTC July 14, 2011).

[18] 76 Fed. Reg. at 41,399; *see also CFTC v. Kraft Foods Group, Inc.*, 153 F. Supp. 3d 996, 1008-09 (N.D. Ill. Dec. 8, 2015), (in denying motion to dismiss a Commission complaint charging manipulation in violation of Section 6(c)(1) and Regulation 180.1, the court found those provisions to be "nearly identical" to Section 10(b) of the Exchange Act and SEC Rule 10b-5).

[19] SEC Rule 10b-5 makes it unlawful to "employ any device, scheme, or artifice to defraud," make untrue statements or omissions of material fact, or engage in conduct that "would operate as a fraud or deceit" on another, "in connection with the purchase or sale of any security." 17 C.F.R. § 240.10b-5 (2017).

[20] *Prohibition of Market Manipulation* [Notice of Proposed Rulemaking], 75 Fed. Reg. 67,657, 67,659 (CFTC Nov. 3, 2010).

section 10(b) and SEC Rule 10b-5 upon which they are modeled, focus on conduct involving manipulation or deception."[21]

Section 6(c)(1) and Regulation 180.1 do not require the showing of an intent to affect prices or an actual effect on prices.[22] Nor does Regulation 180.1 require "a showing of reliance or harm to market participants in a government action brought under CEA section 6(c)(1) and final Rule 180.1."[23] The Commission must only show the intentional or reckless employment of a manipulative device, scheme, or artifice to defraud in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity. [24]

The Commission will consider "all relevant facts and circumstances"[25] in determining whether a violation of Section 6(c)(1) and Regulation 180.1 has occurred.

1. Manipulative device

The Commission has found that a manipulative device exists where a market participant sells an abnormally large volume of a particular swap in a very short period of time at month-end.[26] A manipulative or deceptive device has been found in Exchange Act Section 10(b) and SEC Rule 10b-5 actions based on a wide variety of facts: engaging in "intentional or willful conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities"[27]; camouflaging the failure to sell a sufficient number of securities in a '50,000 or none' offering by buying securities using 'nominee accounts' secretly controlled by the

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[21] 76 Fed. Reg. at 41,400. The securities and derivatives markets are not identical, however, and the Commission has cautioned that it will accordingly "be guided, but not controlled, by the substantial body of judicial precedent applying the comparable language of SEC Rule 10b-5." *Id*. at 41,399.

[22] *Id*. at 41,399. "A market or price effect may well be indicia of the use or employment of a manipulative or deceptive device or contrivance; nonetheless, a violation of final Rule 180.1 may exist in the absence of any market or price effect." *Id*. at 41,401.

[23] *Id*. at 41,403.

[24] *See* 17 C.F.R. § 180.1(a)(1) (2017). The Commission interprets the "in connection with" requirement "broadly, not technically or restrictively." 76 Fed. Reg. at 41,405. Similarly, when the Supreme Court has sought to give meaning to the phrase "in connection with" in the Exchange Act Section 10(b) and SEC Rule 10b-5 context, it has broadly required that the alleged fraud "coincide" with a securities transaction. *Cf. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 85 (2006) ("[I]t is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff or someone else."); *SEC v. Zandford*, 535 U.S. 813, 820 (2002) (holding that the SEC may bring a public enforcement action against a broker who sold customer securities and subsequently misappropriated the proceeds because the "fraud coincided with the sales themselves").

[25] 76 Fed. Reg. at 41,406-07.

[26] *See In re JPMorgan Chase Bank, N.A.*, [2013-2014 Transfer Binder] CFTC Docket No. 14-01, Comm. Fut. L. Rep. (CCH) ¶ 32,838, at 73,952, 2013 WL 6057042, at *11 (CFTC Oct. 16, 2013) (consent order).

[27] *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 199 (1976).

underwriter[28]; the use of wash sales and matched orders through a nominee that "show the appearance of volume trading"[29]; and entering into "a prearranged business quid pro quo" in which at least one party agrees to buy securities at a predetermined price, which is "manipulative both because it tends to support an artificial and inflated price for the securities and because it portrays a false appearance of wide investor interest."[30]

2. Scienter

Section 6(c)(1) is silent with respect to scienter, but the CFTC has stated that "recklessness is, at a minimum, necessary to prove the scienter element of final Rule 180.1"[31] when it adopted Regulation 180.1, which by its plain language explicitly encompasses intentional or reckless conduct.[32] Long-standing CFTC precedent defines "recklessness" as an act or omission that "departs so far from the standards of ordinary care that it is very difficult to believe the [actor] was not aware of what he was doing."[33] A showing of actual knowledge is not required,[34] nor is proof that the defendant was motivated by a desire to manipulate the market.[35] For example, selling a massive volume of swaps during a concentrated period while recognizing position size "had the potential to affect or influence the market" demonstrates the scienter required by Regulation 180.1.[36]

B. McVean, Wharton, and MTI Violated Section 6(c)(1) of the Act and Regulation 180.1 by Using or Employing a Manipulative or Deceptive Device

McVean, in December 2012, and McVean and Wharton, in February 2013, intentionally or recklessly used or employed a manipulative or deceptive device by injecting false information into the marketplace that "portray[ed] a false appearance of wide investor interest."[37] Specifically, by using cattle feedyards as straw purchasers for long live cattle futures positions

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[28] *SEC v. Commonwealth Chem. Sec.*, 410 F. Supp. 1002, 1016 (S.D.N.Y.) (*aff'd in part and modified in part on other grounds*, 574 F.2d 90 (2d Cir. 1978)).

[29] *Edward J. Mawod & Co. v. SEC*, 591 F.2d 588, 595 (10th Cir. 1979).

[30] *Commonwealth Chem. Sec.*, 410 F. Supp. at 1013.

[31] 76 Fed. Reg. at 41,404.

[32] *See* 17 C.F.R. § 180.1 (2017).

[33] *Drexel Burnham Lambert Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1998), quoting *First Commodity Corp. v. CFTC*, 676 F.2d 1, 6-7 (1st Cir. 1982).

[34] 76 Fed. Reg. at 41,404; *see also CFTC v. JBW Capital, LLC*, 812 F.3d 98, 107 (1st Cir. 2016) (finding "ample evidence" that defendant "acted recklessly, without reaching whether he did so knowingly" in affirming district court's grant of summary judgment in CFTC's favor).

[35] *SEC v. U.S. Envtl., Inc.*, 155 F.3d 107, 112 (2d Cir. 1998) (stating that the defendant's "personal motivation for manipulating the market is irrelevant in determining whether he violated [Exchange Act Section] 10(b)").

[36] *In re JPMorgan Chase Bank, N.A.*, [2013-2014 Transfer Binder] Comm. Fut. L. Rep. (CCH) at ¶ 73,952.

[37] *Commonwealth Chem. Sec.*, 410 F. Supp. at 1013.

that, when aggregated with positions in their reported accounts, exceeded CME spot month position limits by hundreds of contracts, they created a false appearance of wider interest, participation, and fragmentation on the long side of the live cattle futures market during the delivery period than actually existed.

McVean and Wharton have been trading live cattle futures for decades and engaged in conduct that was concealed from the live cattle market and the Commission. It is therefore, at a minimum, "very difficult to believe [they were] not aware"[38] that their conduct "had the potential to affect or influence" the live cattle market.[39]

Accordingly, based on the conduct described above, McVean and Wharton intentionally or recklessly used or employed, or attempted to use or employ, a manipulative or deceptive device in connection with futures trading in violation of Section 6(c)(1) of the Act and Regulation 180.1.

1. MTI is liable for McVean's and Wharton's violations of Section 6(c)(1) of the Act and Regulation 180.1 as their principal

Section 2(a)(1)(B) of the Act[40] and Regulation 1.2[41] provide, in relevant part, that the act, omission, or failure of any official, agent, or other person acting for an individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person. Under these provisions, strict liability is imposed upon principals for the actions of their agents acting within the scope of their employment.[42]

The foregoing acts, omissions, and failures of McVean and Wharton occurred within the scope of their employment, office, or agency with MTI. MTI is therefore liable as a principal for McVean's and Wharton's acts, omissions, and failures constituting violations of Section 6(c)(1) of the Act and Regulation 180.1 pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2.

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[38] *See Drexel Burnham Lambert*, 850 F.2d at 748.

[39] *See In re JPMorgan Chase Bank, N.A.*, [2013-2014 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 73,952.

[40] 7 U.S.C. § 2(a)(1)(B) (2012).

[41] 17 C.F.R. § 1.2 (2017).

[42] *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986) (stating "we have no doubt that section 2(a)(1) imposes strict liability on the principal" if "the agent's misconduct was within the scope…of the agency"); *Dohmen-Ramirez v. CFTC*, 837 F.2d 847, 858 (9th Cir. 1988) (holding that Section 2(a)(1) "imposes strict liability" on the principal).

C. McVean, Wharton, MTI, and Gilmore Violated Section 4a(e) of the Act by Exceeding CME Spot Month Position Limits for Live Cattle

Section 4a(e) of the Act[43] makes it unlawful for any person to violate any rule of a contract market that fixes limits on the number of positions a person is allowed to have under contracts of sale of any commodity for future delivery if such rule was approved by the Commission. No proof of scienter is required to establish a violation of Section 4a(e) of the Act.[44]

CME is a registered entity as defined in Section 1a(40) of the Act[45] and a designated contract market for trading live cattle futures contracts pursuant to Section 5 of the Act.[46] CME Rules 10102.E and 559 in effect for the December 2012 and February 2013 live cattle futures contracts imposed an initial spot month position limit of 450 contracts long or short, effective at the close of business on the first business day after the first Friday of the contract month, and a later spot month limit of 300 contracts long or short, effective at the close of business on the business day immediately preceding the last five business days of the contract month. The Commission approved both spot month limits in a letter to CME dated February 25, 2003.

Regulation 150.5(g) provides for aggregation of certain positions in evaluating compliance with position limits established by a designated contract market such as CME:

> In determining whether any person has exceeded the limits established [by a designated contract market], all positions in accounts for which such person by power of attorney or otherwise directly or indirectly controls trading shall be included with the positions held by such person; such limits upon positions shall apply to positions held by two or more person[s] acting pursuant to an express or implied agreement or understanding, the same as if the positions were held by a single person.[47]

Consistent with this approach, CME rules in effect during December 2012 and February 2013 provides that CME position limits "shall apply to all positions in accounts for which a person by power of attorney or otherwise directly or indirectly owns the positions or controls the trading of the positions," and also "to positions held by two or more persons acting pursuant to an express or implied agreement or understanding, the same as if the positions were held by, or the trading of the positions was done by, a single person."[48]

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[43] 7 U.S.C. § 6a(e) (2006).

[44] *Saberi v. CFTC*, 488 F.3d 1207, 1212 n.4 (9th Cir. 2007) (rejecting trader's contention that the Commission was required to prove he intended to violate CME speculative limits for frozen pork bellies futures), *citing CFTC v. Hunt*, 591 F.2d 1211, 1218 (7th Cir. 1979).

[45] 7 U.S.C. § 1a(40) (2012).

[46] 7 U.S.C. § 7 (2012).

[47] 17 C.F.R. § 150.5(g) (2017).

[48] CME Rule 559.D.

The Commission has previously found position limit violations where a trader controls positions in another's account.[49] In fact, in a prior action, the Commission found that MTI, McVean, and Wharton violated applicable position limits.[50]

By dictating all aspects of the live cattle positions that Feedyards A, B, and C bought pursuant to their "swap agreements" with MTI, McVean directly or indirectly controlled those positions; as a result, those positions should have been aggregated with the positions McVean traded in MTI customer and house accounts for position limit purposes. On an aggregated basis, the live cattle futures positions that McVean controlled exceeded CME spot month position limits for live cattle futures on at least 27 trading days in December 2012 and February 2013 by amounts ranging from 12 to 1,234 contracts, in violation of Section 4a(e) of the Act.

Likewise, Wharton directly or indirectly controlled the futures positions that Feedyard D bought pursuant to its "swap agreement" with MTI, and those positions should have been aggregated with the positions Wharton traded in MTI customer and house accounts as a result. On an aggregated basis, the live cattle futures positions that Wharton controlled exceeded CME spot month position limits for live cattle futures on at least 15 trading days in February 2013 by amounts ranging from 205 to 436 contracts, in violation of Section 4a(e) of the Act.

1. MTI is liable for McVean's and Wharton's violations of Section 4a(e) of the Act as their principal

The foregoing acts, omissions, and failures of McVean and Wharton occurred within the scope of their employment, office, or agency with MTI. MTI is therefore liable as a principal for McVean's and Wharton's acts, omissions, and failures constituting violations of Section 4a(e) of the Act pursuant to Section 2(a)(1)(B) of the Act[51] and Regulation 1.2.[52]

2. Gilmore aided and abetted McVean's violations of Section 4a(e) of the Act

Section 13(a) of the Act[53] provides, in relevant part, that any person who commits or willfully aids, abets, counsels, commands, induces, or procures the commission of a violation of the Act or Regulations, or who acts in combination or concert with any other person in any such violation, may be held responsible for such violation as a principal. Establishing liability requires proof that: (1) the Act was violated; (2) the defendant knew of the wrongdoing

[49] *See, e.g., In re Daniels et al.*, CFTC Docket No. 11-05, [2013-2014 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 32,856, 2011 WL 281741 (CFTC Jan. 26, 2011) (speaking order alleging, *inter alia*, trading of rough rice futures contracts beyond position limits in an account in another's name).

[50] *See In re McVean*, CFTC Docket No. 94-4, 1993 WL 445357 (CFTC Nov. 2, 1993) (described in Part III.B, *supra*).

[51] 7 U.S.C. § 2(a)(1)(B) (2012).

[52] 17 C.F.R. § 1.2 (2017).

[53] 7 U.S.C. § 13c(a) (2012).

underlying the violation; and (3) the defendant intentionally assisted the principal wrongdoers.[54] Although actual knowledge of the primary wrongdoer's conduct is required, knowledge of the unlawfulness of that conduct need not be demonstrated.[55] Knowing assistance may be inferred from the surrounding facts and circumstances.[56]

Gilmore, who has worked in the cattle industry for more than 30 years, aided and abetted McVean's accumulation of futures positions that exceeded CME spot month position limits in violation of Section 4a(e) of the Act. Based on the facts and circumstances described above, Gilmore knew of and intentionally assisted McVean's efforts secretly to increase his futures position beyond what applicable position limits permitted using feedyard accounts. For example, Gilmore proposed the "swap agreements" between MTI and Feedyards A, B, C, and D and instructed the feedyards to open new trading accounts at Rosenthal. He acted as the conduit between McVean and Feedyards A, B, and C in December 2012 and February 2013. In February 2013, Gilmore relayed instructions to each of Feedyards A, B, and C to buy 400 or more positions after the 450-contract spot month limit became effective. Combined, the feedyards' position was nearly triple the CME limit. Accordingly, pursuant to Section 13(a) of the Act, Gilmore aided and abetted and is therefore liable for McVean's violations of Sections 4a(e) of the Act.

D. McVean and Wharton Violated Section 4i of the Act and Regulation 18.04 by Submitting False Form 40s to the Commission

Section 4i of the Act[57] authorizes the Commission to require reportable traders to file reports regarding their transactions and positions with the Commission. Regulation 18.04[58] requires every trader who owns, holds, or controls a reportable futures or options position to file with the Commission a "Statement of Reporting Trader" on Form 40 in response to the Commission's request, identifying all futures trading the reportable trader controls. When submitted in a timely and accurate manner, the information submitted in Form 40s provides Commission staff with important data on traders and their positions, enabling them to carry out a variety of surveillance functions that would otherwise not be possible or as effective.[59]

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[54] *In re Nikkhah*, CFTC Docket No. 95-13, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,129, at 49,888 n.28 (CFTC May 12, 2000); *see also In re Richardson Sec., Inc.*, CFTC Docket No. 78-10, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,145, at ¶ 24,646 (CFTC Jan. 27, 1981) (to be guilty of aiding and abetting under the Act, "one must knowingly associate himself with an unlawful venture, participate in it as something that he wishes to bring about, and seek by his actions to make it succeed").

[55] *In re Lincolnwood Commodities, Inc.*, CFTC Docket No. 78-48, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,986, at 28,255 (CFTC Jan. 31, 1984).

[56] *Id.*

[57] 7 U.S.C. § 6i (2012).

[58] 17 C.F.R. § 18.04 (2017).

[59] *See, e.g., 17 C.F.R. Parts 15, 17, 18 and 20 Ownership and Control Reports, Forms 102/102s, 40/40s, and 71* [Notice of Proposed Rulemaking], 77 Fed. Reg. 43,968 (CFTC July 26, 2012).

On May 20, 2011 and July 8, 2013, McVean submitted Form 40s in response to Commission requests. Neither Form 40 disclosed McVean's control over trading in the accounts of Feedyards A, B, and C. Similarly, on April 29, 2012, Wharton submitted a Form 40 in response to a Commission request but failed to disclose his control over trading in the account of Feedyard D. McVean and Wharton therefore violated Regulation 18.04 and Section 4i of the Act.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that McVean and Wharton violated Sections 6(c)(1), 4a(e), and 4i of the Act, 7 U.S.C. §§ 9(1), 6a(e), and 6i (2012), and Regulations 180.1 and 18.04, 17 C.F.R. §§ 180.1 and 18.04 (2017); that MTI is liable for McVean's and Wharton's violations of Sections 6(c)(1) and 4a(e) of the Act and Regulation 180.1 pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2017); and that Gilmore is liable for McVean's violations of Section 4a(e) of the Act pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2012).

VI.

OFFER OF SETTLEMENT

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

A. Acknowledge receipt of service of this Order;

B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;

C. Waive:

1. The filing and service of a complaint and notice of hearing;

2. A hearing;

3. All post-hearing procedures;

4. Judicial review by any court;

5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;

6. Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's

Regulations, 17 C.F.R. §§ 148.1-30 (2017), relating to, or arising from, this proceeding;

7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and

8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;

E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:

1. Makes findings by the Commission that Respondents McVean and Wharton violated Sections 6(c)(1), 4a(e), and 4i of the Act, 7 U.S.C. §§ 9(1), 6a(e), and 6i (2012), and Regulations 180.1 and 18.04, 17 C.F.R. §§ 180.1 and 18.04 (2017); that Respondent MTI is liable for McVean's and Wharton's violations of Sections 6(c)(1) and 4a(e) of the Act and Regulation 180.1 pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2017); and that Respondent Gilmore is liable for McVean's violations of Section 4a(e) of the Act pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a) (2012);

2. Orders Respondents McVean and Wharton to cease and desist from violating Sections 6(c)(1), 4a(e), and 4i of the Act and Regulations 180.1 and 18.04; orders Respondent MTI and its successors and assigns to cease and desist from violating Sections 6(c)(1) and 4a(e) of the Act and Regulation 180.1; and orders Respondent Gilmore to cease and desist from violating Section 4a(e) of the Act;

3. Orders Respondent McVean to pay a civil monetary penalty in the amount of two million dollars ($2,000,000), Respondent MTI to pay a civil monetary penalty in the amount of one million, five hundred thousand dollars ($1,500,000), Respondent Wharton to pay a civil monetary penalty in the amount of one million dollars ($1,000,000), and Respondent Gilmore to pay a civil monetary penalty in the amount of five hundred thousand dollars ($500,000), plus post-judgment interest, within ten (10) days of the date of the entry of the Order, with Respondents jointly and severally liable for the foregoing civil monetary penalties;

4. Orders Respondents McVean, Wharton, and Gilmore, and orders Respondent MTI and its successors and assigns, to comply with the conditions and undertakings consented to in the Offer and set forth in Part VII of this Order.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondents McVean and Wharton shall cease and desist from violating Sections 6(c)(1), 4a(e), and 4i of the Act, 7 U.S.C. §§ 9(1), 6a(e), and 6i (2012), and Regulations 180.1 and 18.04, 17 C.F.R. §§ 180.1 and 18.04 (2017); Respondent MTI and its successors and assigns shall cease and desist from violating Sections 6(c)(1) and 4a(e) of the Act, 7 U.S.C. §§ 9(1) and 6a(e) (2012), and Regulation 180.1, 17 C.F.R. § 180.1 (2017); and Respondent Gilmore shall cease and desist from violating Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2012).

B. Respondent McVean shall pay a civil monetary penalty in the amount of two million dollars ($2,000,000), Respondent MTI shall pay a civil monetary penalty in the amount of one million, five hundred thousand dollars ($1,500,000), Respondent Wharton shall pay a civil monetary penalty in the amount of one million dollars ($1,000,000), and Respondent Gilmore shall pay a civil monetary penalty in the amount of five hundred thousand dollars ($500,000), plus post-judgment interest, within ten (10) days of the date of the entry of the Order, with Respondents jointly and severally liable for the foregoing civil monetary penalties (collectively, "CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) days of the date of entry of the Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961 (2012).

Respondents shall pay the CMP Obligation 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:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 (office)
(405) 954-1620 (facsimile)
nikki.gibson@faa.gov

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

docket number of this proceeding. The paying Respondents shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and Stephanie Reinhart, Senior Trial Attorney, Commodity Futures Trading Commission, 525 W. Monroe St. Suite 1100, Chicago, IL 60661.

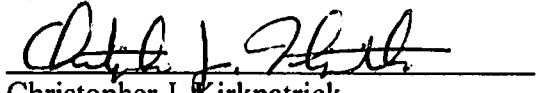
C. Respondents shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: Respondents McVean, Wharton, and Gilmore agree that neither they nor any of their agents or employees under their authority or control, and Respondent MTI agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control, shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents McVean, Wharton, and Gilmore, and Respondents MTI and its successors and assigns, shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

2. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

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

By the Commission.



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

Dated: June 21, 2017