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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. KEVIN CASSIDY, EDWARD O'CONNOR OPTIONABLE INC., DAVID LEE and ROBERT MOORE, Defendants.	08-CIV-9962 (GBD) ECF Filed **CONSENT ORDER OF PERMANENT INJUNCTION, CIVIL MONETARY PENALTY AND ANCILLARY EQUITABLE RELIEF AGAINST DEFENDANT ROBERT MOORE**

On November 18, 2008, Plaintiff Commodity Futures Trading Commission ("Commission" or "CFTC") filed a Complaint against Kevin Cassidy, Edward O'Connor, Optionable Inc., David Lee and Robert Moore, seeking injunctive and other equitable relief for violations of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1 *et seq.* (2006), and the Commission Regulations ("Regulations") promulgated thereunder, 17 C.F.R. §§ 1.1 *et. seq.* (2008).

I. CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint against Defendant Robert Moore ("Moore"), without a trial on the merits or any further judicial proceedings, Moore:

1. Consents to the entry of this Consent Order of Permanent Injunction, Civil Monetary Penalty and Ancillary Equitable Relief Against Defendant Robert Moore ("Order").

2. Acknowledges service of the Summons and Complaint.

3. Admits that this Court has jurisdiction over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which authorizes the

Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

4. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. §13a-1 (2006), in that certain of the acts and practices alleged in the Complaint for Injunctive and Other Equitable Relief and Civil Monetary Penalties Under the Commodity Exchange Act occurred in this District.

5. Waives:

(a) any and all claims that he may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1 et seq. (2008), relating to, or arising from, this action;

(b) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act, 1996 HR 3136, Pub. L. 104-121, §§ 231-223, 110 Stat. 862-63 (1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007), relating to, or arising from, this action;

(c) 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; and

(d) any and all rights of appeal from this action.

6. Neither admits nor denies the allegations of the Complaint or the findings of fact and conclusions of law in this Order, except as to jurisdiction and venue, which he admits. Moore does not consent to the use of the allegations of the Complaint or the findings of fact and conclusions of law in this Order as the sole basis for any other proceeding brought by the CFTC, other than: any proceeding to enforce the terms of this Order; any Commission registration proceeding relating to Moore pursuant to Section 8a of the Act, 7 U.S.C. § 12a(1), and/or Part 3

of the Regulations, 17 C.F.R. §§ 3.1 et seq.; and/or any proceeding in bankruptcy filed by or against Moore. Moore agrees that the allegations of the Complaint and the findings of fact and conclusions of law in this Order shall be taken as true and correct and be given preclusive effect, without further proof, solely in: (a) any proceeding to enforce this Order; (b) any Commission registration proceeding relating Moore pursuant to Section 8a of the Act, 7 U.S.C. § 12a(1), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 et seq.; and/or (c) any proceeding in bankruptcy filed by or against Moore prior to full satisfaction of Moore's civil monetary penalty obligation as set forth below in Section III.B of this Order.

7. Agrees, until such time as Moore fully satisfies his civil monetary penalty obligation as set forth below in Section III.B of this Order, to provide immediate notice to the CFTC of any bankruptcy filed by, on behalf of, or against him in the manner required by Part III.D.45. of this Order.

8. Agrees that no provision of this Order shall in any way limit or impair the ability of any person to seek any legal or equitable remedy against Moore or any other person in any other proceeding nor shall it limit or inhibit Moore's ability to assert legal or equitable defenses or claims against such persons.

9. Agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Moore's: i) testimonial obligations; or ii) right to take legal positions in other proceedings to which the Commission is not a party. Moore shall take all necessary steps to ensure that all of

his agents and employees under his actual or constructive authority or control understand and comply with this agreement.

10. Affirms that he has agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.

11. Consents to the continued jurisdiction of this Court for any purpose relevant to this action, even if Moore now or in the future resides outside the jurisdiction.

II. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law, and an order for permanent injunction, civil monetary penalty and ancillary equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), as set forth herein.

A. Jurisdiction and Venue

12. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person, or, to enforce compliance with the Act, whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

13. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e)(2006), because Moore transacted business, among other places, in this district, and certain of the transactions, acts, practices, and courses of business in violation of the Act have occurred, among other places, within this district.

B. Parties to this Consent Order

14. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2008).

15. Defendant Robert Moore was the executive managing director for Bank of Montreal ("BMO") Commodity Derivatives Group from approximately April 2000 through April 2007. Moore's place of employment for most of the time he was employed at BMO was 3 Times Square Plaza New York, New York 10036. Moore is no longer employed by BMO.

C. Findings of Fact

16. As BMO's natural gas trader, Defendant David Lee ("Lee") traded, i.e., bought and sold, natural gas contracts, including futures and options contracts on the New York Mercantile Exchange ("NYMEX").

17. Lee entered into natural gas option contracts on the NYMEX, a trading facility within the jurisdiction of the Commission. A substantial amount of the natural gas options contracts Lee traded were either American-style or European-style natural gas options contracts, both of which are "exchange-traded and cleared" options on the NYMEX.

18. One of Lee's responsibilities as a natural gas trader was to assign a value to his open positions. Lee performed this task by "marking" – or assigning a value to – his open option positions. To perform this task, Lee used a mathematical model and assessed current market conditions. In assigning a value to his option positions, Lee personally determined the implied volatilities for the options contracts in which he held an open position.

19. Lee knowingly mis-marked certain natural gas options, including those entered into on the NYMEX. Specifically, Lee knowingly input inaccurate implied volatility values into

his options pricing model for various maturity dates and strike prices within those maturity dates. The effect of Lee's mis-marking resulted in overvaluation of certain natural gas options, including ones traded on the NYMEX. Lee inflated the value of his book so that it would appear to BMO that his trading was more profitable than it was in reality.

20. In addition to mis-marking, Lee also mis-valued certain natural gas options, including those entered into on the NYMEX. Specifically, starting in October 2006 and ending in early March 2007, Lee started executing a paired options trade. Lee acquired a large number of exchange-traded natural gas options contracts in the paired trades. Because the paired trades were highly illiquid and the pricing model used by Lee valued the options at a higher dollar value than the traded price of the natural gas options, the correct procedure was for Lee to take a substantial and appropriate holdback with respect to those trades. Lee did not do so and deceived BMO as a result of this failure.

21. By inflating the value of his book as set forth herein, Lee generated a larger bonus for himself and also hid losses he had incurred as a result of his trading.

22. BMO possessed certain procedures to verify the value of its traders' exchange traded and over the counter positions on a bi-monthly basis, including Lee's. This was known as the independent price verification ("IPV") process. The intended goal of this process was to ensure that trader prices used to value BMO's trading books are reasonably in line with market prices quoted by external sources.

23. In addition to the IPV process, BMO possessed certain procedures to calibrate the options pricing model its traders' employed in valuing their option positions. This was known as the "volatility skew verification" process, or the "VSV process." In order to verify the skews utilized in the traders' options model, BMO's Market Risk Division required BMO traders to

collect from brokers price quotes between the brokers and other market participants, memorialized in instant messages. The intended goal of this process was to ensure that skews used to value BMO's trading books were reasonably in line with other market participants' skews. BMO traders, including Lee, were required to collect from brokers quotes from market participants other than BMO in instant messages and maintain them in electronic files for use by BMO's Market Risk Division.

24. Lee and several brokers, including defendants Kevin Cassidy ("Cassidy") and Optionable Inc. ("Optionable"), knowingly deceived and defrauded BMO employees who verified the value of Lee's natural gas book. Specifically, before BMO employees performed the mid-month or end of month (month-end) IPV process, Lee created a series of fabricated bid/offer quotes (a pair of prices) for various at-the-money natural gas option positions that were used by BMO's back office to verify the value of his natural gas options positions.

25. After creating these fabricated quotes, Lee transmitted them to brokers, including Cassidy and other Optionable employees, who agreed to both (1) transmit Lee's bid/offer quotes to BMO employees who were responsible for independently verifying Lee's valuations, i.e., employees involved in the IPV process, and (2) portray Lee's bid/offer quotes as their own professional view of the current bid/offer spread they observed in the market ("broker bid/offer quotes"). The BMO employees responsible for verifying Lee's valuation of his book sought, and believed they had received, brokers' independent views of the current broker bid/offer quotes available in the natural gas options market.

26. Since BMO personnel relied upon the independence of such broker quotes, they used these quotes to verify Lee's valuation of his natural gas book and therefore believed Lee's trading to be profitable. Had BMO personnel known that the broker bid/offer quotes were

actually Lee's, as opposed to the brokers' independent assessment of the bid/offer quotes available in the market, they would have used different sources to verify Lee's valuation of his natural gas book. As a result, the brokers' fraud, deceit, or false reports enabled Lee to continue to enter into natural gas option transactions for several years and to continue to mis-mark his natural gas book.

27. Moore was BMO's Commodity Derivatives Group Executive Managing Director. In that role, Moore was Lee's direct supervisor from approximately April 2000 to April 2007. Prior to being hired as the Executive Managing Director of BMO's derivatives trading group, Moore had been a trader himself at other organizations.

28. As part of his duties, Moore was responsible for reasonably ensuring that Lee and others in his group complied with BMO's policies and procedures. As Lee's supervisor, Moore failed to implement an adequate level of supervision over Lee. Moore, being aware of certain facts, did not take steps that might have led to the discovery of Lee's misconduct sooner. In these respects, Moore failed to act in good faith as Lee's controlling person within the meaning of §13(b) of the Act, 7 U.S.C. §13c(b) (2002).

29. Moore also did not take adequate steps to prevent Lee from violating important BMO policies.

30. Moore also failed to avoid activities or associations that had the appearance of interfering with his independent exercise of good judgment as a supervisor. Moore had a personal relationship with Cassidy that had the appearance of affecting his ability to view BMO's dealings with Optionable objectively.

31. By late 2006 or early 2007, Moore knew, as did others at BMO, about disparities between Lee's valuation of his options book and the valuations resulting from multi-contributor

sources. Despite the size of the valuation discrepancies, Moore did not adequately question Lee about how he arrived at the implied volatility values that were inputted into the model or the reliability of the skews employed in Lee's model. Moore also knew that during the relevant period, several OTC counterparties disputed the value Lee attributed to certain OTC transactions, which were based on Lee's options model. Moore did not question Lee sufficiently about these disputes and why some of the discrepancies were so large.

32. Moore also knew about Lee's paired EOO trades and that they generated a large profit on the first day. He also knew or should have known that the market for these paired EOO trades was illiquid and that Cassidy, acting as Lee's broker, arranged for the vast majority of these trades to be executed opposite entities owned and/or controlled by a single individual. As an experienced trader and manager, Moore should have questioned more closely whether the profits were excessive and required a holdback.

D. Conclusions of Law

33. Section 4c(b) of the Act, 7 U.S.C. § 6c(b), makes it unlawful for any person to enter into or confirm the execution of any transaction involving any commodity regulated under this Act that is of the character of, or is commonly known to the trade as an option, bid, offer, put or call contrary to any rule, regulation, or order of the Commission, prohibiting such transaction or allowing such transaction under such terms and conditions as the Commission shall prescribe.

34. Pursuant to Section 4c(b) of the Act, the Commission promulgated Regulation 33.10, 17 C.F.R. § 33.10, which relates to options entered into on a trading facility and provides that it shall be unlawful for any person directly or indirectly, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction, to:

a) cheat or defraud or attempt to cheat or defraud any other person;

b) make or cause to be made to any other person any false report or statement hereof or cause to be entered for any person any false record thereof; or

c) deceive or attempt to deceive any other person by any means whatsoever.

35. By the conduct described in paragraphs 16 through 26 above, Lee violated Section 4c(b) of the Act, and Regulations 33.10(a), (b) and (c).

36. For the reasons alleged in paragraphs 27 through 32 above, Moore is liable as a controlling person for Lee's violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

37. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Moore may continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

III. ORDER OF PERMANENT INJUNCTION, CIVIL MONETARY PENALTY AND ANCILLARY EQUITABLE RELIEF

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

A. Permanent Injunction

38. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), Moore is permanently restrained, enjoined, and prohibited from engaging in any conduct in violation of the Act and/or Regulations concerning any commodity options transaction.

B. Civil Monetary Penalty

39. Moore shall pay to the Commission a civil monetary penalty in the amount of one hundred and fifty thousand dollars ($150,000), plus post-judgment interest ("the CMP

Obligation"). Moore shall pay the CMP Obligation within ten days from the date of entry of this Order.

40. If the CMP Obligation is not timely paid, post-judgment interest shall accrue on the eleventh day after the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order, pursuant to 28 U.S.C. § 1961.

41. Moore 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, 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: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, Oklahoma 73169
Telephone: 405-954-6569

If payment is to be made by electronic funds transfer, Moore shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Moore shall accompany payment of the penalty with a cover letter that identifies himself as payor and the name and docket number of the proceedings. Moore shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and the Chief, Office of Cooperative Enforcement, at the same address.

42. Any amount paid pursuant to this Order that is clawed back from the CFTC, or any other agency, commission or branch of the U.S. government, in the course of any bankruptcy proceeding shall not be counted towards full satisfaction of Moore's CMP Obligation.

43. Any acceptance by the Commission of partial payment of Moore's CMP Obligation shall not be deemed a waiver of the respective requirement 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.

C. Cooperation

44. Moore shall continue to cooperate fully with the Commission and any government agency seeking to enforce the CMP Obligation and ancillary relief provisions of this Order by providing any requested information relating to his financial status, including, but not limited to, income and earnings, assets, financial statements, asset transfers, and tax returns.

D. Miscellaneous Provisions

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

Notice to Commission:

Director
Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581

Notice to Defendant:

Jeffrey Zuckerman
Law Office of Jeffrey R. Zuckerman, P.C.
The Lincoln Building
60 East 42nd Street, Suite 1753
New York, New York 10165

46. Until such time as Moore fully satisfies his CMP Obligation as set forth above in Section III.B of this Order, in the event that Moore changes his residential or business telephone number(s) and/or address(es) at any time, he shall provide written notice of the new number(s) and/or address(es) to the Commission within twenty (20) calendar days thereof.

47. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

48. Invalidation: If any provision of this Order, or the application of any provisions or circumstances is held invalid, the remainder of the Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

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

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50. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Order and for all other purposes related to this action.

CONSENTED TO AND APPROVED BY:

Dated: 1/28/2010

Robert Moore

Dated: 1/27/2010

Jeffrey Zuckerman (as to form)
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Attorney for Defendant Robert Moore

Dated: 3/5/10

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cryall@cftc.gov

Attorney for Plaintiff

IT IS SO ORDERED.
DATED: 08 MAR 2010

GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE
HON. GEORGE B. DANIELS