UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:	)	
Simon Posen,	)	**CFTC Docket No.: 17 –20**
Respondent.	)	

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

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Simon Posen ("Posen" or "Respondent") violated Section 4c(a)(5)(C) of the Commodity Exchange Act ("Act" or "CEA"), 7 U.S.C. § 6c(a)(5)(C) (2012), from at least December 2011 through March 2015 (the "Relevant Period"). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

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

[1] Respondent consents 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 Respondent does 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 a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent 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.

III.

The Commission finds the following:

A. SUMMARY

During the period December 2011 through March 2015, Respondent engaged in the disruptive practice of "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution) with respect to Crude Oil futures contracts traded on the New York Mercantile Exchange ("NYMEX") and Gold, Silver, and Copper Futures contracts traded on the Commodity Exchange, Inc. ("COMEX"). Posen's spoofing orders, of which there were thousands during the Relevant Period, violated Section 4c(a)(5)(C) of the Act.

B. RESPONDENT

Simon Posen is a New York-based trader, who manually trades futures products on NYMEX and COMEX. Posen is a member of NYMEX and COMEX, who during the Relevant Period traded from home for his own account and was not employed by any corporate entity. Although he has previously held registrations as a floor trader and floor broker, Posen is not currently registered with the Commission in any capacity.

C. FACTS

Posen is a manual "point and click" trader who traded by computer from his New York City apartment for his own account. He traded in futures markets, including Crude Oil, Gold, Silver and Copper, during the period December 2011 through March 2015. Posen's daily activity volumes were at their highest during 2012 and were somewhat lower in late 2014 and 2015, after a hiatus in trading from February 2013 to August 2013. On a typical day, Posen would enter hundreds of buy and sell orders in multiple products, with a focus on Crude Oil, Gold, Silver, and Copper Futures contracts. Posen often traded during off-peak hours, when the markets were less liquid, and would typically exit the market without holding onto any positions at the end of his trading session each day.

Posen repeatedly used the same trading pattern to spoof in the Crude Oil, Gold, Silver, and Copper Futures markets: he would, within a matter of seconds: (1) place one or more large orders or a series of layered orders (orders with gradually increasing or decreasing prices), totaling 60 or more lots, on either the buy or sell side of the market, with the intent to cancel these orders before execution; (2) shortly thereafter place one or more smaller orders of one to ten lots, or "iceberg" orders (orders in which the size of the order is not visible to other market participants) on the opposite side of the market; and (3) once the smaller order or "iceberg" order was filled in whole or in part, cancel the original large or layered orders on the opposite side of the market before those orders could be filled. Often, he would immediately repeat this pattern in reverse to exit the position he had created and revert to being flat.

Posen deployed this spoofing strategy on thousands of occasions during the Relevant Period. In 2014 and 2015, Posen traded less frequently and he also reduced his use of "iceberg" orders and tended to favor single, large-volume orders over the series of layered orders. However, Posen continued to place spoof orders until the end of the Relevant Period.[2]

IV.

LEGAL DISCUSSION

Section 4c(a)(5)(C) of the Act—Spoofing Violations

Section 4c(a)(5) of the Act makes it unlawful for "[a]ny person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that . . . is, is of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution)." As described above, Posen entered into thousands of bids or offers on a registered entity with the intent to cancel the bids or offers before execution in violation of Section 4c(a)(5)(C) of the Act. *See, e.g.*, *CFTC v. Oystacher et al.*, No. 15-CV-9196, 2016 WL 4439945 (N.D. Ill. Dec. 20, 2016); *CFTC v. Sarao*, No. 15-CV-3398 (N.D. Ill. Nov. 14, 2016); *CFTC v. Khara and Salim*, No. 15-CV-03497 (S.D.N.Y. March 31, 2016).

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Posen violated Section 4c(a)(5)(C) of the Act.

VI.

OFFER OF SETTLEMENT

Posen has submitted an Offer in which he, without admitting or denying the findings and conclusions herein:

A. Acknowledges receipt of service of this Order;

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

C. Waives:

   (1) the filing and service of a complaint and notice of hearing;

   (2) a hearing;

   (3) all post-hearing procedures;

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[2] CME Group ("CME") initially investigated Posen's trading in NYMEX Crude Oil Futures contracts and COMEX Gold Futures contracts for the period September 2013 to February 2014. This investigation resulted in CME ordering Posen to pay a $75,000 fine and a five-week trading bar. Subsequently, CME investigated Posen's trading in COMEX Silver and Copper Futures contracts for the period November 2014 through March 2015. This investigation resulted in a $90,000 fine and a four-week trading bar.

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

(7) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-68 (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 upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Posen has consented in the Offer; and

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

(1) makes findings by the Commission that Posen violated Section 4c(a)(5)(C) of the Act;

(2) orders Posen to cease and desist from violating Section 4c(a)(5)(C) of the Act;

(3) orders Posen to pay a civil monetary penalty in the amount of six hundred and thirty-five thousand dollars ($635,000), plus post-judgment interest;

(4) orders that Posen be permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012), and all registered entities shall permanently refuse him trading privileges;

(5) orders that Posen be permanently prohibited from applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017); and

(6) orders Posen to comply with the conditions, undertakings, and representations 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. Respondent shall cease and desist from violating Section 4c(a)(5)(C) of the Act.

B. Civil Monetary Penalty

1. Respondent shall pay a civil monetary penalty in the amount of six hundred and thirty-five thousand dollars ($635,000) (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten 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).

2. Respondent 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, Respondent shall make the payment 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 fax
   nikki.gibson@faa.gov

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

C. Respondent is permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), and all registered entities shall permanently refuse him trading privileges.

D. Respondent shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: Respondent agrees that neither he nor any of his successors, assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party.

2. Respondent agrees that he shall not, directly or indirectly, at any time in the future:

    a. enter into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2017)) for Respondent's own personal accounts or for any accounts in which Respondent has a direct or indirect interest;

    b. have any commodity interests traded on Respondent's behalf;

    c. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;

    d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;

    e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2016); and/or

    f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2016)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017).

3. Cooperation with the Commission: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement ("Division"), and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter

of this action or any current or future Commission investigation related thereto. As part of such cooperation, Respondent agrees to:

a. preserve and produce to the Commission in a responsive and prompt manner, as requested by the Division's staff, all non-privileged documents, information, and other materials wherever located, in the possession, custody, or control of Respondent;

b. accept service by mail, electronic mail, or facsimile transmission of notices or subpoenas for documents and/or testimony at depositions, hearings, or trials;

c. appoint Respondent's attorney as agent to receive service of such notices and subpoenas; and

d. waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules in connection with requests or subpoenas of the Division's staff;

4. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of his 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 on this date.

By the Commission,

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

Dated: July 26, 2017