

**UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION**

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**2:17 pm, Sep 17, 2015**

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In the Matter of )  
)

Robert M. McMahon, )

Respondent. )  
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CFTC Docket No. 15-32

**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”) has reason to believe that in or about July 2010 (the “Relevant Period”), Robert M. McMahon (“McMahon” or “Respondent”) violated Sections 4b(a)(1)(A) and (C) of the Commodity Exchange Act (“CEA” or “Act”), 7 U.S.C. § 6b(a)(1)(A) and (C). 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”), which 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 Sections 6(c) and 6(d) of the Commodity Exchange Act Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.<sup>1</sup>

<sup>1</sup> 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 in 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

The Commission finds the following:

**A. SUMMARY**

During the Relevant Period, McMahon engaged in a deceptive scheme to allocate to himself futures contracts priced better than market prices, and to allocate to a customer futures contracts priced worse than market prices. To perpetuate the scheme, the customer's natural gas futures orders would be filled with noncompetitively-executed block trades with McMahon taking the other side of the customer's block trades. The block trades were executed at prices unfavorable to the customer but favorable to McMahon. At roughly the same time as the block trades were executed, McMahon had executed for himself futures contracts on NYMEX at market prices that entirely offset his noncompetitively-executed block trades with their better-than-market prices. With this structure—matching McMahon's noncompetitively priced block trades almost immediately with offsetting, competitively priced market trades—the scheme virtually guaranteed that McMahon profited, at the customer's expense, on each block trade. On July 28, 2010, McMahon improperly profited \$171,800 from two such transactions.

**B. RESPONDENT**

Robert M. McMahon is a resident of Mt. Pocono, Pennsylvania. Before and after the Relevant Period, McMahon was registered with the Commission as an associated person. During the Relevant Period, McMahon was not registered with the Commission in any capacity, and McMahon's application for registration as an associated person was pending.

**C. FACTS**

Before the Relevant Period, McMahon worked at various entities for several years trading commodities and commodity futures contracts and was registered with the Commission as an associated person. In July 2010, he was no longer registered or employed by a registrant.

During the Relevant Period, McMahon and a floor trading clerk engaged in a scheme that worked as follows. First, the clerk placed with a floor broker an order for NYMEX Henry Hub Natural Gas Futures Contracts in an amount desired by a customer. At roughly the same time that order was executed, the clerk reported a noncompetitive block trade between McMahon and the customer, buying and selling the same amount of natural gas futures contracts as in the order placed with the floor broker, but at a worse price for the customer than the market prices.

Pursuant to McMahon's scheme, the clerk then allocated the market trades and the offsetting side of the block trade to McMahon's account, thus liquidating McMahon's market trades and block trades at a profit. The clerk also allocated the opposite side of the block trade to the customer's account, thus filling the customer's order at a worse price for the customer than the market prices. In this way, without disclosing the allocation scheme to the customer, McMahon received the better than market prices for himself while worse than market prices were received by the customer.

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

In particular, McMahon engaged in two such allocations on July 28, 2010. One transaction involved a block trade between McMahon and the customer for 124 August 2010 futures contracts at better than market prices for McMahon and worse than market prices for the customer. The other involved a block trade between McMahon and the customer for 196 September 2010 futures contracts at better than market prices for McMahon and worse than market prices for the customer. At roughly the same time that each block trade was executed, McMahon exactly offset his better than market-priced block trades against his market-priced trades, thereby accruing \$171,800 in profits with virtually no risk.

### III.

#### LEGAL DISCUSSION

##### **McMahon Engaged in Trade-Practices Fraud**

Section 4b(a) of the Act, 7 U.S.C. § 6b(a), applies to the futures contracts transactions conducted by Respondent in this matter because they were in or in connection with the making of contracts of sale of a commodity for future delivery made on or subject to the rules of a designated contract market, namely NYMEX.

In particular, Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A) and (C), make it unlawful

for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person . . . (A) to cheat or defraud or attempt to cheat or defraud the other person; [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for . . . the other person . . . .

Causing deceptive allocation of favorable futures order fills to an account from which one benefits violates Sections 4b(a)(1)(A) and (C). *See, e.g., In re Thomas Carroll and R. Scott Hopkins*, CFTC Dkt. No. 11-02 (Dec. 10, 2010) (scheme defrauded employer by allocating profitable fills to trader's personal account, in violation of Section 4b) (citing *In re GNP Commodities, Inc.*, (1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 (CFTC August 11, 1992), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993); *In re Brian Keane*, CFTC Dkt. No. 09-01 (Oct. 6, 2008) (fraudulent trade-allocation scheme involving delay of NYMEX order allocations in order to allow cherry-picking of favorable fills, in violation of Section 4b).

During the Relevant Period, through conduct described above, McMahon, in or in connection with orders to make and the making of contracts for future delivery made and to be made on or subject to the rules of a designated contract market, NYMEX, for or on behalf of a customer, knowingly and willfully cheated or defrauded, or attempted to cheat or defraud, the customer, in violation of Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A) and (C).

**IV.**

**FINDINGS OF VIOLATION**

Based upon the foregoing, the Commission finds that: during the Relevant Period, Respondent violated Sections 4b(a)(1)(A) and (C) of the Act.

**V.**

**OFFER OF SETTLEMENT**

Respondent has submitted the 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 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. Waives:
  - 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 Respondent 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 (2015), relating to, or arising from, this proceeding;
  - 7. any and all claims that Respondent 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. Stipulates that the record basis on which this Order is entered shall consist solely of the

findings contained in this Order to which Respondent has consented in the Offer;

- 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, during the Relevant Period, Respondent violated Sections 4b(a)(1)(A) and (C) of the Act;
  2. orders Respondent to cease and desist from violating Sections 4b(a)(1)(A) and (C);
  3. orders Respondent to pay a civil monetary penalty in the amount of one hundred seventy-one thousand eight hundred dollars (\$171,800), plus post-judgment interest, if the civil monetary penalty is not paid within thirty (30) days of the entry of this Order;
  4. orders that Respondent 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), and all registered entities shall refuse Respondent trading privileges; and
  5. orders Respondent to comply with the conditions and undertakings consented to in the Offer and as 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 Sections 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A) and (C).
- B.** Respondent shall pay a civil monetary penalty of one hundred seventy-one thousand eight hundred dollars (\$171,800), plus post-judgment interest if the civil monetary penalty is not paid within thirty (30) days of the date of entry of this Order (the "CMP Obligation"). If the civil monetary penalty is not paid within thirty (30) days of the date of the entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on 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 (2012).

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, 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 fax  
nikki.gibson@faa.gov

If payment is to be made by electronic funds 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 the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter, a copy of this Order, 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. Respondent shall also simultaneously provide electronic copies of these documents to Trial Attorney Gates S. Hurand by e-mail to the address ghurand@cftc.gov.

- 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)), and all registered entities shall refuse Respondent trading privileges.
- D. Respondent and his successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither Respondent nor any of Respondent's successors and assigns, agents or employees under Respondent's authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's (i) testimonial obligations, or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and his successors and assigns shall undertake all steps necessary to ensure that all of Respondent's agents and/or employees under Respondent's authority or control understand and comply with this agreement.
  2. Commodity Interests: Respondent agrees that Respondent shall never, directly or indirectly:
    - i. enter into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) for Respondent's own personal account(s) or for any account(s) in which Respondent has a direct or indirect interest;

- ii. have any commodity interests traded on Respondent's behalf;
  - iii. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
  - iv. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
  - v. 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) (2015); and/or
  - vi. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2015)), 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) (2015).
3. Cooperation with the Commission: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, 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 this settlement, or any current or future Commission investigation related thereto.
4. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission or the Monitor of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of Respondent's obligation to make further payments pursuant to this Order, nor deemed a waiver of the Commission's right to seek to compel payment of any remaining balance.
5. Change of Address/Phone: Until such time as Respondent satisfies in full his CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission both by certified mail and by e-mail to Trial Attorney Gates S. Hurand (ghurand@cftc.gov) of any change to Respondent's telephone number(s) and mailing address(es) within ten (10) calendar days of the change.

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

By the Commission.



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

Dated: September 17, 2015