

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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U.S. COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

-against-

JOSEPH F. WELSH III,

Defendant.

12 Civ. 1873 (WHP)  
ECF Case

CONSENT ORDER  
FOR PERMANENT INJUNCTION,  
CIVIL MONETARY PENALTY, AND  
OTHER EQUITABLE RELIEF  
AGAINST DEFENDANT  
JOSEPH F. WELSH III

I. INTRODUCTION

On March 14, 2012, Plaintiff U.S. Commodity Futures Trading Commission (Commission or CFTC) filed a Complaint against Joseph F. Welsh III (Welsh or Defendant) seeking injunctive and other equitable relief for violations of the Commodity Exchange Act (Act), 7 U.S.C. §§ 1 *et seq.*

II. CONSENTS AND AGREEMENTS

To effect settlement of all charges alleged in the Complaint against Defendant without a trial on the merits or any further judicial proceedings, Defendant:

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendant Joseph F. Welsh III (Consent Order);

2. Affirms that he has read and agreed to this Consent Order voluntarily and that no promise, other than as specifically contained herein, 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 Consent Order;

3. Acknowledges service upon him of the summons and Complaint;
4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6(c) of the Act, 7 U.S.C. § 13a-1(2012);
5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1 *et seq.*;
6. Admits that venue properly lies with this Court pursuant to Section 6(c) of the Act, 7 U.S.C. § 13a-1(e) (2012);
7. Waives:
  - a. 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 Commission Regulations (Regulations), 17 C.F.R. §§ 148.1 *et seq.* (2014), relating to, or arising from, this action;
  - b. 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, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;
  - c. any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and
  - d. any and all rights of appeal from this action;
8. Consents to the continued jurisdiction of this Court over him for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other

purpose relevant to this action, even if Defendant now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he will not oppose enforcement of this Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

10. 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 the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect Defendant's: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendant shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement;

11. By consenting to the entry of this Consent Order, Defendant neither admits nor denies the allegations of the Complaint or the Findings of Fact and Conclusions of Law in this Consent Order, except as to jurisdiction and venue, which he admits. Further, Defendant agrees and intends that the allegations contained in the Complaint and all of the Findings of Fact and Conclusions of Law contained in this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: (a) any current or subsequent bankruptcy proceeding filed by, on behalf of, or against Defendant; (b) any proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a (2012), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.* (2014); and/or (c) any proceeding to enforce the terms of this Consent Order;

12. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 35 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against Defendant whether inside or outside the United States; and

13. Agrees that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendant in any other proceeding.

### III. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusion of Law, permanent injunction, and equitable relief pursuant to Section 6(c) of the Act, 7 U.S.C. § 13a-1(2012), as set forth herein.

#### A. Findings of Fact

##### 1. The Parties to This Consent Order

14. Plaintiff **U.S. Commodity Futures Trading Commission** is an independent federal regulatory agency that is charged by Congress with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.*, and the Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* The Commission maintains its principal office at Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581.

15. Defendant **Joseph F. Welsh III** resides in Northport, New York. From at least June 2006 through May 2008 (the Relevant Period), Welsh was an associated person (AP) of MF Global, Inc., a registered futures commission merchant (FCM) with its principal place of business in New York, New York. At all times during the Relevant Period, as an AP of MF

Global, Welsh had the responsibility for, among other things, entering orders for palladium and platinum futures contracts on behalf of Christopher Louis Pia (Pia), a portfolio manager for Moore Capital Management LLC (Moore Capital).

**2. Other Relevant Individual**

16. **Christopher Louis Pia** resides in North Castle, New York. During the Relevant Period, Pia served as a portfolio manager of Moore Capital, which was a registered commodity trading advisor (CTA). Pia was formerly registered as an AP of Moore Capital.

**3. The New York Mercantile Exchange (NYMEX) Palladium and Platinum Futures Contracts**

17. During the Relevant Period, palladium and platinum futures contracts traded on the NYMEX, a contract market designated by the Commission for trading commodity futures contracts. Both the NYMEX palladium and platinum futures contracts may be traded on the NYMEX trading floor (also referred to as the trading pit) by open outcry trading, with palladium futures contracts trading from 8:30 a.m. to 1:00 p.m. Eastern Standard Time (EST) and platinum futures contracts trading from 8:20 a.m. to 1:05 p.m. EST. Both NYMEX palladium and platinum futures contracts also may be traded electronically on Globex, the Chicago Mercantile Exchange's electronic trading platform, Sunday through Friday from 6:00 p.m. to 5:15 p.m. EST with a 45 minute break between 5:15 p.m. and 6:00 p.m. EST. During the Relevant Period, the majority of trades in NYMEX palladium and platinum futures contracts were executed on Globex, rather than in the trading pit.

18. During the Relevant Period, the settlement prices of both the NYMEX palladium and platinum futures contracts were calculated based on the volume-weighted average price of all transactions conducted both on the trading floor and on Globex, during the two-minute closing period for the contracts. The closing period for trading palladium futures contracts is

from 12:58 p.m. to 1:00 p.m. EST, and the closing period for trading platinum futures contracts is from 1:03 p.m. to 1:05 p.m. EST. Globex and the trading pit trade side-by-side through the close. Trading continues on Globex after the close of trading in the pit.

19. Trading in both contracts was relatively illiquid, and Welsh's trading in both futures contracts on the close on behalf of Pia frequently accounted for a significant portion of the volume. Welsh's trading strategy took advantage of these key characteristics of the palladium and platinum futures markets—thinly traded, illiquid, and volume-weighted average settlement price calculations—to attempt to manipulate the daily settlement prices.

**4. Welsh Attempted to Manipulate the Prices of NYMEX Palladium and Platinum Futures Contracts**

20. During the Relevant Period, Pia or his execution clerks entered orders to Welsh with instructions to exert upward pressure on the prices of NYMEX palladium and platinum futures contracts. While employed as an associated person at MF Global, Welsh engaged in a trading strategy in an attempt to manipulate upward the settlement prices of the palladium and platinum futures contracts.

21. During the Relevant Period, Welsh placed Pia's market-on-close (MOC) buy orders in palladium and platinum futures contracts through a NYMEX floor clerk. Pia's buy orders were relatively large orders for the relatively illiquid palladium and platinum futures contract markets. Typically, Pia's orders constituted a large percentage of the volume of trading on the close. Welsh routinely submitted Pia's MOC buy orders in palladium and platinum futures contracts to a floor broker by telephone over a recorded line. Welsh placed MOC orders with the floor clerk with directions that indicated that he wanted to push the settlement prices higher.

22. To effectuate the manipulative scheme, Welsh waited until the last five or ten seconds of the closing periods of platinum and palladium futures contract trading to place Pia's buy orders with a floor clerk who worked in the NYMEX trading pit. Welsh engaged in this trading strategy throughout the Relevant Period and did so with the intent to manipulate the prices of platinum and palladium futures contracts, including the settlement prices of those contracts.

**B. Conclusions of Law**

**1. Jurisdiction and Venue**

23. This Court has jurisdiction over this action pursuant to Section 6c(a) of the Act, 7 U.S.C. § 13a-1 (2012), which provides that whenever it shall appear to the Commission that any 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, the Commission may bring an action in the proper district court of the United States to enjoin such act or practice, or to enforce compliance with the Act or any rule, regulation or order thereunder.

24. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because Defendant transacted business in this District, and certain of the transactions, acts, practices, and courses of business in violation of the Act occurred within this District.

**2. Violations of the Act**

25. By the conduct described in paragraphs 1 through 22 above, Defendant violated Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) (2006).

26. Unless restrained and enjoined by this Court, there is reasonable likelihood that Defendant will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act.

#### IV. PERMANENT INJUNCTION

##### IT IS HEREBY ORDERED THAT:

27. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Defendant is permanently restrained, enjoined, and prohibited from directly or indirectly engaging in conduct in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2) (2012).

28. Defendant is also permanently restrained, enjoined, and prohibited from directly or indirectly trading any palladium and platinum products 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)), including but not limited to palladium and platinum futures contracts, options on palladium and platinum futures contracts, or any platinum or palladium product regulated by the Commission.

29. Defendant shall also comply with the following provisions for a period of five (5) years from the date of this Consent Order:

- a. Defendant shall attend training programs on an annual basis, addressing the ethics, compliance, and legal requirements of the Act and Regulations, including abusive and manipulative trading practices and indicators of such practices. Defendant will create and maintain documentation that he has fulfilled his compliance training; and
- b. beginning one (1) year from the date of entry of this Consent Order, Defendant shall submit a report to the Division of Enforcement of the



Commission, on an annual basis, that details the steps taken to comply and the results of his compliance with Paragraph 29a above.

**V. CIVIL MONETARY PENALTY**

**IT IS FURTHER ORDERED THAT:**

**A. Civil Monetary Penalty**

30. Defendant shall pay a civil monetary penalty in the amount of Five Hundred Thousand Dollars (\$500,000) (CMP Obligation), plus post-judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

31. Defendant shall pay his 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 U.S. Commodity Futures Trading Commission and sent to the address below:

U.S. 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  
Telephone: (405) 954-7262  
Fax: (405) 954-1620  
nikki.gibson@faa.gov

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

shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, U.S. Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581.

**B. Provision Related to Monetary Sanction**

32. Partial Satisfaction: Any acceptance by the Commission of partial payment of Defendant's CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

**VI. MISCELLANEOUS PROVISIONS**

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

Notice to Commission:

Attention: Director of Enforcement  
Division of Enforcement  
U. S. Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

Notice to Defendant:

David E. Mollon, Esq.  
Law Offices of David E. Mollon  
15 Susquehanna Avenue  
Great Neck, N.Y. 11021

All such notices to the Commission shall reference the name and docket number of this action.

34. Change of Address/Phone: Until such time as Defendant satisfies in full his CMP Obligation as set forth in this Consent Order, Defendant shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

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

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

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

38. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this action, including any motion by Defendant to modify or for relief from the terms of this Consent Order.


39. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendant, upon any person under his authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile, or otherwise insofar as he or she is acting in active concert or participation with Defendant.

40. Counterparts and Facsimile Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

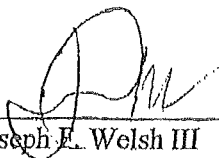
41. Defendant understands that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order.

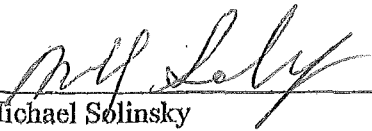
IT IS SO ORDERED on this 17 day of June, 2015.

  
WILLIAM H. PAULEY III  
United States District Judge

CONSENTED TO AND APPROVED BY:

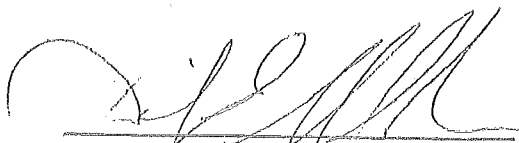
  
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Joseph E. Welsh III

Date: 5/21/15

  
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Michael Solinsky  
Chief Trial Attorney  
U.S. Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581  
(202) 418-5384  
msolinsky@cftc.gov

Date: 6/4/15

APPROVED AS TO FORM:

  
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15 Susquehanna Avenue  
Great Neck, N.Y. 11021  
(347) 766-8529  
dmollon@mollonlaw.com

Date: 5/26/15

