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UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

ASPIRE COMMODITIES LLC,

Respondent.

CFTC Docket No. 24-30

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

I. INTRODUCTION

The Commodity Futures Trading Commission ("Commission" or "CFTC") has reason to believe that, as set forth below, from December 1, 2022 to February 29, 2024 (the "Relevant Period"), Aspire Commodities LLC f/k/a Aspire Commodities LP ("Aspire" or "Respondent") violated Section 4a(b)(2) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6a(b)(2), and Commission Regulation ("Regulation") 150.2, 17 C.F.R. § 150.2 (2023). 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.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Respondent admits the facts set forth in Section II below, acknowledges that its conduct violated the Act and Regulations, consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions ("Order"), and acknowledges service of this Order.[1]

[1] Respondent agrees that the findings of fact and conclusions of law in the Order shall be taken as true and correct and be given preclusive effect without further proof in this proceeding and any other proceeding brought by the Commission or to which the Commission is a party or claimant, including but not limited to, a proceeding in bankruptcy or receivership. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

Seven times during the Relevant Period, Aspire exceeded the Federal spot-month speculative position limit for cash-settled reference contracts to the New York Mercantile Exchange's ("NYMEX") physically-delivered Henry Hub Natural Gas ("NG") futures contract as set forth in Regulation 150.2, 17 C.F.R. § 150.2 (2023), and Appendix E to Part 150 of the Regulations, 17 C.F.R. pt. 150 app. E (2023). By this conduct, Aspire violated Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2), and Regulation 150.2.

In accepting Respondent's Offer, the Commission acknowledges Respondent's representations concerning its remediation in connection with this matter.

B. RESPONDENT

Aspire Commodities LLC is a commodities and derivatives trading firm with locations in Houston, Texas and Dorado Beach, Puerto Rico. As discussed in Section II.C below, there have been four actions by exchanges against Aspire for violations of exchange established position limits since October of 2016. Aspire is not registered with the Commission in any capacity.

C. FACTS

Regulation 150.2, 17 C.F.R. § 150.2 (2023), and Appendix E to Part 150 of the Regulations, 17 C.F.R. pt. 150 app. E, set forth Federal speculative position limit levels for, among other things, both physically-delivered NYMEX NG futures contracts and cash-settled reference NG contracts. Pursuant to Regulation 150.2 and Appendix E to Part 150, normally, no market participant may hold more than 2,000 net long or short cash-settled reference NYMEX NG futures contracts (on a futures-equivalent basis) during the contract's spot month.[2]

However, pursuant to Regulation 150.3(a)(4), 17 C.F.R. § 150.3(a)(4) (2023), a designated contract market ("DCM") (i.e., a board of trade or an exchange) may grant a conditional limit exemption for cash-settled NG reference contracts to a market participant. If the DCM does so, then the market participant may exceed the Federal spot month speculative position limit by an additional 8,000 NYMEX NG cash-settled equivalent contracts on that exchange. Accordingly, a participant utilizing the conditional limit exemption may hold up to 10,000 net long or short cash-settled reference contracts per exchange. However, if a market participant holds or trades positions in the physically-delivered NYMEX NG contract during the final three trading days in the spot month for the contract, it loses the conditional limit exemption. If this happens, the market participant must comply with the Federal spot month

[2] Regulation 150.1, 17 C.F.R. § 150.1 (2023), defines "spot month," in relevant part, as the period of time beginning at the earlier of "(i) [t]he close of business on the trading day preceding the first day on which delivery notices can be issued by the clearing organization of a contract market or (ii) [t]he close of business on the trading day preceding the third-to-last trading day and ending when the contract expires."

speculative position limit (i.e., 2,000 contracts) until such time as it exits all of its physically-delivered NYMEX NG contracts. Similarly, a market participant who has no physically-delivered NYMEX NG contracts may continue to hold up to 10,000 cash-settled reference NG contracts during the final three trading days on each DCM for which it has a conditional limit exemption. However, a market participant may not exceed 10,000 cash-settled reference NG contracts at any time during the spot month.

During the Relevant Period, Aspire held conditional limit exemptions granted by the ICE Futures U.S. Energy Division ("IFED") and the Nodal exchanges. As such, Aspire could exceed the Federal spot month speculative position limit by an additional 8,000 NYMEX NG cash-settled equivalent contracts on each of the exchanges during the NG contract spot month so long as Aspire did not hold or trade positions in the physically-delivered NYMEX NG contract during the final three trading days in the contract's spot month.

Notwithstanding this, seven times during the Relevant Period, Aspire exceeded the Federal spot month speculative position limits in cash-settled reference NG futures contracts.

For example, Aspire held conditional limit exemptions at both IFED and Nodal during the NG January 2023 contract's spot period. Normally those exemptions would allow Aspire to exceed the 2,000 Federal spot month limit for cash-settled reference contracts in NG. However, because Aspire carried a physically-delivered January 2023 NG position into the final three trading days for the January 2023 NG futures contract, the conditional limit exemptions did not apply so long as Aspire held the physically-delivered position. In other words, for those trading days that Aspire held the physically-delivered position, Aspire could only trade or hold a maximum of 2,000 cash-settled reference NG futures contracts. Specifically, the final three trading days for the January 2023 NG futures contract began at the end of the day on December 22, 2022. At the end of that day, Aspire carried a 50 contract short position in physically-delivered January 2023 NG futures. Aspire did not trade out of that position until almost 9:30 a.m. EST on December 23, 2022. As a result, Aspire lost the conditional limit exemption for those two days and, thus, could only trade or hold a maximum of 2,000 cash-settled reference NG futures contracts.

However, during the same period (December 22nd to 23rd), Aspire held a net 2,100 short position in IFED cash-settled NG contracts and a net 2,500 short position in Nodal cash-settled NG contracts. Consequently, Aspire was over the 2,000 Federal spot month speculative position limit in the IFED and Nodal cash-settled NG contracts by 100 and 500 contracts, respectively, during those two days on two different exchanges. This resulted in Aspire exceeding the Federal spot month speculative position limit for cash-settled NYMEX NG reference futures contracts on these days.

Aspire exceeded the Federal spot month speculative position limits in cash-settled reference NG futures contracts on separate occasions in 2023 and 2024.

Aspire represents that it voluntarily undertook remedial steps to enhance its compliance program, including, but not limited to, enhancing process and controls around position limit compliance, conducting supplemental training, and engaging with relevant exchanges to secure trading system functionality improvements enhancing position limit compliance for the entire market.

III. LEGAL DISCUSSION

A. Aspire Violated CFTC Spot Month Position Limits

Section 4a(b)(2) of the CEA makes it unlawful for any person "directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market . . . in excess of any position limit fixed by the Commission for or with respect to such commodity. . . ." 7 U.S.C. § 6a(b)(2). Pursuant to Regulation 150.2 and Appendix E to Part 150 of the Regulations, no person may hold NYMEX NG futures positions during the spot month, net long or short, in excess of 2,000 contracts unless they qualify for an exemption under Regulation 150.3. 17 C.F.R. §§ 150.2, 150.3, pt. 150 app. E (2023).

Although IFED and Nodal granted Aspire a conditional limit exemption, seven times during the Relevant Period Aspire exceeded the Federal spot month speculative position limit in cash-settled reference NG futures contracts during the final three trading days in the spot month for the contract.

The Commission does not need to establish scienter—i.e., proof of intent to exceed the applicable speculative position limit—in order to prove a violation of the Commission's speculative position limit provisions. *CFTC v. Hunt*, 591 F.2d 1211, 1218 (7th Cir. 1979); *Saberi v. CFTC*, 488 F.3d 1207, 1212 (9th Cir. 2007). The Act "unambiguously imposes liability" for violations of speculative position limits. *Saberi*, 488 F.3d at 1212.

IV. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2), and Regulation 150.2, 17 C.F.R. § 150.2 (2023).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it knowingly and voluntarily:

A. Consents to the resolution of this matter in an administrative proceeding;

B. Acknowledges service of this Order;

C. Admits the facts described in Section II above and acknowledges that its conduct violated Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2), and Regulation 150.2, 17 C.F.R. § 150.2 (2023);

D. 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;

E. Waives:

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

2. A hearing;

3. All post-hearing procedures;

4. Any and all rights or defenses that Respondent has or might have for the matter to be adjudicated in a federal district court in the first instance, including any associated right to a jury trial;

5. Judicial review by any court;

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

7. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2023), relating to, or arising from, this proceeding;

8. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and

9. 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, including this Order;

F. Agrees for purposes of the waiver of any and all rights under the Equal Access to Justice Act, specified in paragraph E.7 above, that the Commission is the prevailing party in this action;

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

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

1. Makes findings by the Commission that Respondent violated Sections 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2), and Regulation 150.2, 17 C.F.R. § 150.2 (2023);

2. Orders Respondent to cease and desist from violating Sections 4a(b)(2) of the Act and Regulation 150.2;

3. Orders Respondent to pay a civil monetary penalty in the amount of eight hundred thousand dollars ($800,000), within ten (10) business days of the date of entry of this Order; and

4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondent shall cease and desist from violating Sections 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2), and Regulation 150.2, 17 C.F.R. § 150.2 (2023).

B. Respondent shall pay a civil monetary penalty in the amount of eight hundred thousand dollars ($800,000) ("CMP Obligation") within ten (10) business days of the date of entry of this Order. If the CMP Obligation is not paid in full within ten (10) business days of the date of entry of this Order, then post-judgment interest shall accrue on the unpaid portion of 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.

Respondent shall pay the CMP Obligation and any post-judgment interest 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:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-AMZ-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Federal Aviation Administration at the above email 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 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 and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: Respondent 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 the Order or creating, or tending to create, the impression that the 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 its successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

2. 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 its obligation to make further payments pursuant to the Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

3. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in the Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.

4. Notice to Creditors: Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership, bankruptcy, or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

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: September 25, 2024