

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

\_\_\_\_\_  
**In the Matter of:**

**Mitsubishi International  
Corporation,**

**Respondent.**  
\_\_\_\_\_

)  
)  
)  
) **CFTC Docket No. 19-46**  
)  
)  
)

**RECEIVED CFTC**



Office of Proceedings  
Proceedings Clerk

**8:01 pm, Sep 30, 2019**

**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”) has reason to believe that from at least April 2016 through January 2018, Mitsubishi International Corporation (“Mitsubishi” or “Respondent”) violated Section 4c(a)(5)(C) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6c(a)(5)(C) (2012). 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. 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 (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 use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. 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

From at least April 2016 through January 2018 (the “Relevant Period”), Mitsubishi—by and through one of its traders (“Trader A”)—engaged in the disruptive trading practice of “spoofing” in markets for certain precious metals futures products traded on designated contract markets in the United States. Respondent’s disruptive trading violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

In accepting Respondent’s Offer, the Commission recognizes Respondent’s cooperation with the Division of Enforcement’s (“Division”) investigation of this matter. The Commission notes that Respondent promptly self-reported the misconduct and proactively implemented remedial measures and process improvements to deter and detect similar misconduct. The timely self-report, cooperation, and remediation resulted in a significantly reduced civil monetary penalty.

### B. RESPONDENT

**Mitsubishi International Corporation (“Mitsubishi”)** is a New York corporation with its principal place of business in New York. Mitsubishi engages in various business activities related to the global trading of industrial products and commodities. During the Relevant Period, Mitsubishi engaged in the proprietary trading of futures contracts in the United States. Mitsubishi engaged in trading operations through Trader A, who worked in London, United Kingdom. Mitsubishi is not registered in any capacity with the Commission.

### C. FACTS

#### 1. Mitsubishi’s Disruptive Trading

During the Relevant Period, Trader A, an employee of a Mitsubishi affiliate, traded on behalf of Mitsubishi in London. Trader A’s duties on behalf of Mitsubishi during the Relevant Period included trading futures contracts, including silver and gold futures contracts on the Commodity Exchange, Inc. (“COMEX”), a designated contract market. Trader A accessed these markets through a trading platform from Mitsubishi’s affiliate’s office in London.

During the Relevant Period, Trader A placed hundreds of orders for futures contracts with the intent to cancel the orders before their execution (“spoofing”). Trader A spoofed futures contracts traded on COMEX for silver and gold. Trader A’s spoofing strategies included a pattern of placing a Genuine Order followed by a Spoof Order, and then cancelling the Spoof Order after Trader A received some fill of the Genuine Order. In this pattern, Trader A first placed an order that Trader A intended to execute (“the Genuine Order”). Soon thereafter, in the same market, Trader A entered a larger order (“the Spoof Order”) opposite the Genuine Order

while the Genuine Order rested live. Trader A intended to cancel the Spoof Order prior to execution. In many instances, Trader A submitted the Genuine Order as an iceberg order<sup>2</sup>. Following the transmission of Trader A's Spoof Order, Trader A then received a partial or complete fill of the Genuine Order, and then cancelled the Spoof Order before the Spoof Order was filled. Trader A also at times layered<sup>3</sup> Trader A's Spoof Orders. Trader A engaged in this spoofing activity in order to move the market in a direction favorable to the Genuine Order.

## **2. Mitsubishi's Self-Reporting, Cooperation, and Remediation**

Once aware of Trader A's misconduct, Mitsubishi promptly suspended Trader A and reported the conduct to the Division. Mitsubishi provided this self-report prior to the completion of its internal review and data analysis. Mitsubishi voluntarily conducted an internal review that exceeded the scope of the initial indications of Trader A's misconduct. As part of its internal investigation, Mitsubishi completed data analysis in a timely fashion, which contributed to revealing the scope of the misconduct at issue. As such, Mitsubishi's efforts greatly expedited the Division's investigation.

At the same time, Mitsubishi represented that they engaged in substantial remediation efforts. Among other things, Mitsubishi launched an overhaul of its systems and controls and implemented a variety of enhancements to detect and prevent similar misconduct. As part of this process, Mitsubishi retained a specialist compliance consultant to assist in developing its compliance and surveillance program. Among other things, Mitsubishi performed anti-manipulation training, staged a series of compliance workshops, established a trading compliance risk management committee, created a new trading compliance program, and built a new trade reporting and review framework.

In recognition of Mitsubishi's self-reporting, cooperation, and remediation, the Commission imposes a significantly reduced civil monetary penalty.

## **III. LEGAL DISCUSSION**

### **A. Section 4c(a)(5)(C) of the Act – Spoofing Violations**

Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012), 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, Trader A entered into multiple 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.

---

<sup>2</sup> An “iceberg order,” also known as a hidden quantity order, is an order type offered by certain designated contract markets on electronic trading platforms whose order quantity (i.e., number of contracts) is only partially visible in the order book to other market participants.

<sup>3</sup> “Layered” orders are orders with gradually increasing or decreasing prices.

*See, e.g., United States v. Coscia* 866 F.3d 782, 791 (7th Cir. 2017), *cert. denied*, 138 S. Ct 1989 (2018).

## **B. Respondent Mitsubishi Is Liable for the Acts of Its Agents**

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation (“Regulation”) 1.2, 17 C.F.R. § 1.2 (2018), provide that the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his or her employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust. Under Section 2(a)(1)(B) and Regulation 1.2, principals are strictly liable for the actions of their agents. *See Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986) (principals are strictly liable for the acts of their agents); *see also Dohmen-Ramirez v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988) (same); *CFTC v. Byrnes*, 58 F. Supp.3d 319, 324 (S.D.N.Y. 2014) (same). Trader A’s spoofing was committed within the scope of Trader A’s agency relationship with Mitsubishi. *See, e.g., CFTC v. Int’l Fin. Services (New York) Inc.*, 323 F. Supp.2d 482, 499 n.12 (S.D.N.Y. 2004) (analyzing scope of employment based on the totality of the circumstances).

Trader A engaged in the conduct described herein within the course and scope of Trader A’s agency relationship with Mitsubishi. Therefore, Mitsubishi is liable for the acts, omissions, and failures of Trader A, as described above, that constituted violations of Section 4c(a)(5)(C) of the Act.

## **IV. FINDINGS OF VIOLATION**

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

## **V. OFFER OF SETTLEMENT**

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges 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 it 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. pt. 148 (2018), relating to, or arising from, this proceeding;
  7. 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
  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, including this Order;
- 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; 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 Respondent violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012);
  2. Orders Respondent to cease and desist from violating Section 4c(a)(5)(C) of the Act;
  3. Orders Respondent to pay a civil monetary penalty in the amount of \$400,000 (four-hundred thousand dollars), plus post-judgment interest; 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 Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).
- B. Respondent shall pay a civil monetary penalty in the amount of \$400,000 (four-hundred thousand dollars), ("CMP Obligation"), within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of 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 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  
Division of Enforcement  
6500 S. MacArthur Blvd.  
HQ Room 181  
Oklahoma City, OK 73169  
(405) 954-6569 office  
(405) 954-1620 fax  
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne 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 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:

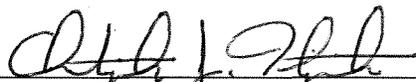
1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, 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 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. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the 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 the following for a period of five years from the date of the entry of this Order, or until all related investigations and litigation are concluded, including through the appellate review process, whichever period is longer:

- i. Preserve all records relating to the subject matter of this proceeding, including, but not limited to, audio files, electronic mail, other documented communications, and trading records;
  - ii. Subject to applicable laws and regulations, comply fully, promptly, completely, and truthfully with all inquiries and requests for information or documents;
  - iii. Provide authentication of documents and other evidentiary material;
  - iv. Subject to applicable laws and regulations, provide copies of documents within Respondent's possession, custody, or control;
  - v. Subject to applicable laws and regulations, Respondent will make its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondent, regardless of the individual's location, and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including, but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation; and
  - vi. Subject to applicable laws and regulations, Respondent will make its best efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee, or agent of Respondent.
3. 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 this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this 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.

**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 30, 2019