

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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8:01 pm, Sep 30, 2019

In the Matter of:)
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RBC Capital Markets, LLC,

Respondent

CFTC Docket No. 19-47

**ORDER INSTITUTION 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 from on or about late 2011 through May 2017 (“Relevant Period”), RBC Capital Markets, LLC (“RBCCM” or “Respondent”) violated Sections 4c(a) and 4g(a) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6c(a), 6g(a) (2012), and Commission Regulations (“Regulations”) 1.11(e), 1.31, 1.35, 1.38, 3.3(e) and 166.3, 17 C.F.R. §§ 1.11(e), 1.31, 1.35, 1.38, 3.3(e), 166.3 (2018). 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 administrative proceedings, 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.¹

¹ 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, of the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. Summary

During the Relevant Period, RBCCM, a registered futures commission merchant (“FCM”), failed to supervise its FCM activities in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2018). RBCCM’s supervision failures resulted in hundreds of trades that violated the Act and Regulations, in addition to other violations.

Between December 2011 and October 2015, RBCCM engaged in at least 385 noncompetitive, fictitious, wash sale transactions known as Exchange For Physical (“EFP”) transactions (“Wash EFPs”),² in violation of Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2012), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2018). Notably, 217 of those Wash EFPs occurred after entry of a Consent Order in December 2014, which resolved a CFTC enforcement action against RBCCM’s parent, the Royal Bank of Canada (“RBC”), for wash and fictitious transactions (“Consent Order”).³

In addition, as detailed below, RBCCM’s supervision failures resulted in additional violations, including: (1) failures to prepare, present, and timely file quarterly Risk Exposure Reports (“RER”) as required on five occasions between October 2014 and December 2016, in violation of Regulation 1.11(e), 17 C.F.R. § 1.11(e) (2018); (2) failure to disclose RBCCM’s violations of Regulation 1.11 as material issues of non-compliance and misstating the status and effectiveness of RBCCM’s Risk Management Program (“RMP”) in its Chief Compliance Officer (“CCO”) Reports as required by Regulation 3.3(e), 17 C.F.R. § 3.3(e) (2018); and (3) failing to maintain and timely produce required records, in violation of Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31, 1.35 (2018).

B. Respondent

Respondent RBC Capital Markets is a Minnesota limited liability company and wholly-owned indirect subsidiary of RBC.⁴ In its capacity as an FCM, RBCCM executes RBC’s proprietary futures transactions on designated contract markets in the United States as part of RBC’s capital markets business. RBCCM also executes its own trades. Traders from RBCCM and other RBC entities trade interest rate futures and swaps from the same physical desk in New York City, they directly or indirectly report to the same supervisor for North American interest rates, and RBC’s annual report aggregates RBCCM’s interest rates profits and losses with all of

² An EFP is a transaction where the buyer of a cash commodity transfers to the seller a corresponding amount of long futures contracts, or receives from the seller a corresponding amount of short futures, at a price difference mutually agreed upon. The opposite hedges in futures of both parties are thus closed out simultaneously.

³ *CFTC v. Royal Bank of Canada*, No. 12-cv-2497, 2014 WL 10675544 (S.D.N.Y Dec. 18, 2014).

⁴ RBC is a Canadian bank and financial services firm headquartered in Toronto, Canada. RBC has been provisionally registered with the CFTC as a Swap Dealer since December 31, 2012.

its other capital markets business. At all times relevant, RBCCM has been registered with the Commission as a FCM.

C. Facts

1. RBCCM's Supervision Failures and Lack of Internal Controls

RBC takes an enterprise-wide approach to managing its subsidiaries. All RBC affiliates, including RBCCM, must follow company-wide policies and procedures. RBCCM relied on RBC's global compliance resources and enterprise-wide risk management structure to comply with the Act's and Regulations' requirements. However, RBCCM did not implement several of those policies and procedures, which, as relevant here, resulted in hundreds of RBCCM trades that violated the Act and Regulations as well as other violations described below.

For example, RBCCM described its futures compliance manual as the "cornerstone" of the company's regulatory risk management framework. RBC maintained the manual on an internal website, but until at least May 2017, RBCCM had no system to ensure that employees retrieved, reviewed, and followed it. As a result, RBCCM futures traders and operations employees with responsibility related to futures did not receive or review the manual.

In addition, RBCCM entered into EFPs with itself and other RBC affiliates, but until at least March 2017, the manual did not set forth the requirements for EFPs to be properly executed within one legal entity or where there is common beneficial ownership between the parties. Moreover, RBCCM also failed to conduct any formal futures or EFP training for futures traders and operations employees until at least May 2015. As of February 2017, certain RBCCM operations employees with supervisory responsibilities still did not understand certain basic restrictions relating to the Wash EFPs at issue here.

In addition, in its 2013 CCO report, RBCCM stated that RBC's internal auditors had found deficiencies with RBCCM's monitoring of futures trading, and that "RBCCM made significant enhancements [including that] the Firm upgraded its trade surveillance utilized to detect Cross transactions, Wash transactions and potential front-running." But the former employee who was then in charge of futures compliance at RBCCM ("RBCCM Futures Compliance Officer"), and who had responsibility to review futures transactions for trading abnormalities or potential violations of the Act or Regulations, did not monitor for potential futures wash trades or randomly sample EFPs as expected until at least March 2015.

Also in 2015, as part of its effort to comply with the Consent Order, RBC delegated to RBCCM surveillance of certain futures transactions, including off-exchange transactions, executed in the United States. RBCCM rolled out an electronic surveillance program designed to generate alerts for potential wash transactions, among other things. RBCCM expected that RBCCM Futures Compliance Officer would review, assess, and close out all alerts. But RBCCM never directed RBCCM Futures Compliance Officer to carry out those tasks, nor followed up or checked to ensure the tasks were completed. Instead, RBCCM Futures Compliance Officer only cursorily reviewed select alerts and even closed an alert (noting: "independent traders") for an EFP executed by the same RBCCM trader because he failed to make any inquiries.

RBCCM's supervision failures stand out in light of the entry of a Consent Order in December 2014, which resolved a CFTC enforcement action against RBC for wash and fictitious transactions. The Consent Order, among other things, prohibited RBC from future violations of the Act's and Regulations' proscriptions against wash trading. Even though RBCCM had actual notice of the Consent Order and RBC delegated execution and surveillance of the bank's futures transactions on exchanges in the United States to RBCCM, RBCCM failed to adequately implement a reasonable supervisory system overseeing its futures transactions.

2. RBCCM Engaged in Prohibited Non-Competitive, Fictitious Wash EFP Sales

Around December 2011, RBCCM began entering Wash EFPs internally to move positions between RBCCM accounts trading interest rates at current prices because they believed the exchange allowed it, and it was less costly and administratively cumbersome than other options to manage risk. However, the Wash EFPs did not comply with the Chicago Mercantile Exchange's ("CME") requirements for independent control of opposing accounts to EFP transactions. RBCCM knew or should have known that the Wash EFPs were improper. RBCCM employees asked RBCCM Futures Compliance Officer about the propriety of the Wash EFPs, but he failed to respond, follow up with the CME, or provide any formal training until at least May 2015.

Between approximately December 2011 and October 13, 2015, RBCCM entered into and reported at least 385 Wash EFPs involving accounts that were not independently controlled. Of the 385 Wash EFPs, approximately 227 involved one RBCCM trader who controlled both accounts.

3. RBCCM Failed to Prepare and Timely File Multiple Risk Exposure Reports

Beginning in January 2014, RBCCM, as an FCM, was required by Regulation 1.11 to establish and enforce a system of risk management policies and procedures (the RMP). Regulation 1.11 also required RBCCM to prepare and file RERs on a quarterly basis for senior management and/or the governing body that set forth all applicable risk exposures of the FCM. RBCCM failed to do so in October 2014, January 2015 and April 2015.

RBCCM filed its first RER for the quarter ending July 2015 late, on October 1, 2015. The Commission notified RBCCM of its failure in the middle of 2016. RBCCM then filed its October 2016 RER 106 days late on March 28, 2017 after the Commission explicitly requested it.

4. RBCCM Failed to Disclose Material Non-Compliance Issues

To comply with Regulation 3.3(e), CCOs of FCMs must prepare a report on an annual basis covering the firm's most recent fiscal year and provide that report to the firm's board of directors or senior managers. Until November 16, 2016, FCMs were required to electronically submit CCO Reports to the Commission not more than 60 days after the end of an FCM's fiscal year. Regulation 3.3(f)(2). Regulation 3.3(e) provides that the annual report must "[d]escribe any material noncompliance issues identified, and the corresponding action taken."

The CME examined RBCCM during RBCCM's fiscal year 2015 (ending October 31, 2015). The CME had concerns with RBCCM's RMP and about RBCCM's failure to file quarterly RERs. RBCCM did not disclose these violations as material noncompliance issues in its 2015 CCO Report filed in January 2016. Instead, RBCCM reported that it intended to update its RMP because "[m]ore specificity required; improvements to periodic risk reports." RBCCM also inaccurately suggested that the "CME found no issues" with its RMP because the CME's audit letter (which disclaimed any opinion on compliance with the Act and Regulations) omitted reference to RMP deficiencies.

RBCCM also did not disclose its failure to timely file its October 2016 RER in the 2016 CCO Report as a material noncompliance issue. At all times relevant, RBCCM understood that failure to timely file an RER constitutes a material noncompliance issue requiring disclosure.

5. RBCCM Failed to Maintain and Promptly Produce Required Records

RBCCM disclosed to the Commission the existence of the 385 Wash EFPs in late January 2016, a few days before RBCCM formally disclosed the Wash EFPs in its 2015 CCO report (filed January 29, 2016). Upon receiving the relevant information, the Division promptly sought to determine, among other things, the scope of the issues, the cause of the Wash EFPs, who was responsible, and whether a supervisory system existed that was reasonably designed to detect and deter such unlawful trade practices. RBCCM and RBC, however, failed to timely and fully respond to the Division's requests for production of records required to be maintained by registrants under the Act and Regulations and subsequent subpoenas issued by the Division.

Moreover, RBCCM and RBC did not promptly produce the required records notwithstanding the fact that the prior Consent Order required cooperation of RBC in any investigation by the Division related to the subject matter of this action or any current or future Commission investigation related thereto. From the outset of the Division's investigation, RBCCM sought to persuade Division's staff that it was not necessary to pursue any inquiry into RBC's involvement with the Wash EFPs, even from a supervisory perspective, despite the inter-relationship between RBCCM and RBC. Prior to June 2017, outside counsel told the Division's staff that he was trying to keep the Bank out of it. The Division expended considerable resources trying to obtain information and timely compliance with its subpoenas from RBC and RBCCM.

In June 2017, RBC retained new outside counsel, and RBC and RBCCM began to cooperate and respond to the Division's requests in a meaningful way. However, even those efforts were hindered by RBCCM's failure to maintain full, complete, and systematic records of their futures transactions in violation of the Regulations, which precluded the Division from readily identifying relevant traders, account controllers, and their employers.

III. LEGAL DISCUSSION

A. RBCCM's Supervision Failures Violated Regulation 166.3.

Regulation 166.3, 17 C.F.R. § 166.3 (2018), imposes on registrants an affirmative duty to supervise their partners, employees and agents diligently by establishing, implementing and executing adequate supervisory structures and compliance programs.

A violation of Regulation 166.3 occurs where: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In re GNP Commodities, Inc.*, CFTC No. 89-1,1992 WL 201158, at *19 (Aug. 11, 1992), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993); *In re Paragon Futures Ass'n*, CFTC No. 88-18, 1992 WL 74261, at *14 (Apr. 1, 1992) (concluding that the "focus of any proceeding to determine whether Rule 166.3 has been violated will be on whether [a] review [has] occurred and, if it did, whether it was 'diligent'."). A violation under Regulation 166.3 is an independent violation for which no underlying violation is necessary. *In re Collins*, No. 94-13, 1997 WL 761927, at*10 (Dec. 10, 1997) (citing *GNP Commodities*, 1992 WL 201158, at n.11).

Regulation 166.3 further provides that a registrant has a "duty to develop procedures for the 'detection and deterrence of [CEA violations] by its agents.'" *Samson Refining Co. v. Drexel Burnham Lambert, Inc.*, CFTC No. 82-R448, 1990 WL 282783, at *11 (Feb. 16, 1990) (quoting *Lobb v. J.T. McKerr & Co.*, CFTC No. 85R-185, 1989 WL 242384, at *11 (Dec. 14, 1989)). The lack of an adequate supervisory system can be shown where the registrant failed to develop proper procedures for the detection of wrongdoing. *CFTC v. Trinity Fin. Grp, Inc.*, No. 92-cv-6832, 1997 WL 820970, at *29 (S.D. Fla. Sept. 29, 1997) (controlling person failed to establish or maintain meaningful procedures for detecting fraud by firm's employees and knew of specific incidents of misconduct, yet failed to take reasonable steps to correct the problems), *aff'd in part, vacated in part and remanded sub nom. CFTC v. Sidoti*, 178 F.3d 1132, 1137 (11th Cir. 1999). Evidence of violations that "should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly" is probative of a failure to supervise. *Paragon Futures Ass'n*, 1992 WL 74261, at *14).

RBCCM management failed to diligently supervise the FCM. The supervision failures were systemic, occurred over a long period of time, and directly resulted in violations of other provisions of the Act and accompanying Regulations. Therefore, RBCCM's conduct violated Regulation 166.3.

B. RBCCM Engaged In Wash Sales, Fictitious Sales and Noncompetitive Trading In Violation of Section 4c(a) of the Act

Section 4c(a)(2)(A) of the Act, 7 U.S.C. § 6c(a)(2)(A) (2012), provides that it is unlawful for any person to offer to enter into, enter into, or confirm the execution of a commodity futures or swap transaction that is, of the character of, or is commonly known to the trade as, a "wash sale," "accommodation trade," or "fictitious sale." Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2018), also prohibits knowingly entering into illegal non-competitive transactions to buy and sell futures contracts.

Wash sales negate the risk or price competition incident to the market. *Wilson v. CFTC*, 322 F.3d 555, 559-60 (8th Cir. 2003) (affirming CFTC order finding Section 4c(a) violation). Wash trading produces a virtual financial nullity because the resulting net financial position is near or equal to zero. *Id.*

A wash sale occurs with: (1) the purchase and sale; (2) of the same delivery month of the same futures contract; (3) at the same (or a similar) price; and (4) with an intent to negate risk or price competition, or the participant's knowledge that the transaction was designed to achieve a wash result. *Id.* Wash sales typically are accomplished in two ways: by a trader: (1) buying and selling with himself or herself; or (2) buying and selling with another person pursuant to a pre-arranged plan or understanding. *Sundheimer v. CFTC*, 688 F.2d 150, 152 (2d Cir. 1982).

EFPs that are equal and offsetting in quantity and price, where the same entity, or beneficial owner or controller is on both sides of the transactions, constitute "wash sales" within the meaning of Section 4c(a) of the Act. *In re SG Americas Securities, RBCCM*, CFTC No. 16-33, 2016 WL 5682204, at *8 (Sep. 28, 2016) (consent order) (citing *In re Noble Americas Corp.*, CFTC No. 10-12, 2010 WL 1803817 (May 3, 2010) (consent order)). That the same entity, or beneficial owner or controller, was on both sides of an EFP suggests intent to avoid price competition and market risk standing alone. *See In re Three Eight Corp.*, CFTC No. 88-33, 1993 WL 212489, at *10 (June 16, 1993) (paired orders for matching executions for a single account suggests intent to avoid a *bona fide* market position). Likewise, an EFP for the same contract, quantity and same or similar price—i.e., a wash result—reflects an intent to avoid market risk and price competition. *Id.* Failure to inquire into the legitimacy of the EFP in the face of such facts can support an inference of knowing participation in wash sales. *Id.* Knowing participation is the requisite scienter for violations of Section 4c(a) of the Act and Regulation 1.38(a). *In re Bear Stearns*, CFTC No. 80-31, 1991 WL 83520, at *14-16 (Jan. 25, 1991),

RBCCM knowingly executed and confirmed the execution of at least 385 EFPs where the opposing account controllers were not independent and the EFPs achieved a wash result. Accordingly, RBCCM violated Section 4c(a) of the Act.

C. RBCCM's Wash EFPs Violated Regulation 1.38(a)

Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2018), generally requires that all purchases and sales of commodity futures be executed "openly and competitively." This requirement, however, "shall not apply to transactions which are executed noncompetitively in accordance with the written rules of the contract market which have been submitted to and approved by the Commission, specifically providing for the noncompetitive execution of such transactions." *Id.*

CME and CBOT Rule 538 permit "Exchanges for Related Position"—of which EFPs are a sub-set—under certain conditions. EFPs are permissible if they are between two independently controlled accounts and involve privately negotiated and simultaneous exchange of a futures position for a corresponding and offsetting cash physical position. Exchange for Related Positions, CME Rulebook Rule 538 (Oct. 4, 2016). CME allows EFPs between "Independently controlled accounts of the same legal entity . . . [if] the account controllers operate in separate business units . . . [or] For EFPR transactions between accounts with common beneficial ownership, the parties to the trade must be able to demonstrate the independent control of the accounts and that the transaction had economic substance for each party to the trade." *Id.* at Rule 538.B; CME Group, MRAN RA1006-5 (June 11, 2010); CME Group, MRAN RA1311-5 (Apr. 14, 2014). If a noncompetitive trade does not qualify for an exchange rule exception, it violates Regulation 1.38(a). *Williams v. Lind-Waldock & Co.*, CFTC No. 95-R022, 1997 WL 35391403 (July 10, 1997); *GNP Commodities, Inc.*, 1992 WL 201158, at *14.

RBCCM entered into 385 EFPs that were not in accordance with CME rules because the RBCCM interest rate traders did not have independent control of the accounts, they operated in the same business unit of the company, and the profits and losses of the EFPs rolled up to the same account resulting in a wash for RBCCM. Therefore, RBCCM violated Regulation 1.38(a).

D. RBCCM Failed to File Risk Exposure Reports in Violation of Regulation 1.11

Regulation 1.11, 17 C.F.R. § 1.11 (2018), went into effect January 2014. The Regulation was promulgated to enhance customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for FCMs. *See* Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 Fed. Reg. 68,506, 68,512 (Nov. 14, 2013).

Regulation 1.11(e)(2) requires the risk management unit of each FCM to provide to senior management and its governing body quarterly written RERs setting forth all applicable risk exposures of the FCM, any recommended or completed changes to the RMP, and the status of the program, among other things. An FCM is required to submit copies of its quarterly RER to the Commission within five business days of providing the reports to senior management.

RBCCM failed to prepare and file RERs reflecting all applicable risk exposures for each of the three quarters between July 2014 and April 2015. RBCCM filed two other RERs up to 106 days late despite prior notice of its violations. Therefore, RBCCM violated Regulation 1.11(e)(2).

E. RBCCM Failed to Disclose Material Non-Compliance Issues to the Commission in Violation of Regulation 3.3

Regulation 3.3(e), 17 C.F.R. § 3.3(e) (2018), requires an FCM's CCO to annually prepare a written report covering the most recently completed fiscal year. Regulation 3.3(e)(2) and (5) provides in part that the CCO Report must include: (i) a review of each applicable requirement under the Act and Regulations, including identification of the policies and procedures reasonably designed to ensure compliance and an assessment of the effectiveness of those procedures; and (ii) describe any material noncompliance issues identified, and the corresponding action taken.

Until November 16, 2016, FCMs had to submit their CCO Reports to the CFTC not more than 60 days after the end of the FCM's fiscal year. Regulation 3.3(f), 17 C.F.R. § 3.3(f) (2016). The filing period was extended to 90 days thereafter. Chief Compliance Officer Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; Amendments to Filing Dates, 81 Fed. Reg. 80,563, 80,566 (Nov. 16, 2016).

RBCCM was aware of its failure to timely prepare and file multiple RERs in violation of Regulation 1.11 at least as of 2015. RBCCM failed to disclose its violations of Regulation 1.11 in its 2015 CCO Report, filed with the CFTC in January 2016. RBCCM also failed to disclose its continued violations of Regulation 1.11 as a material noncompliance issue in its 2016 CCO report (filed with the CFTC in January 2017). Therefore, RBCCM violated Regulation 3.3(e).

F. RBCCM Failed to Maintain Complete and Systematic Records in Violation of Regulations 1.31 and 1.35

As an FCM, RBCCM must comply with the recordkeeping obligations set forth in Section 4g(a) of the Act, 7 U.S.C. § 6g(a) (2012), and Regulations 1.31(a) and 1.35(a), 17 C.F.R. §§ 1.31(a), 1.35(a) (2018). Failure to retain and promptly produce records required to be kept for inspection to Commission staff violates the Act and Regulations. *See GNP Commodities, Inc.*, 1992 WL 12917230, at *15 (FCM violated Section 4g of the Act and Regulations 1.31 and 1.35 by failing to retain office orders and carbons that were the subject of a Division investigation). Registrants are strictly liable for recordkeeping violations without showing scienter. *See Ping He (Hai Nam) Co. Ltd. v. NonFerrous Metals (U.S.A.) Inc.*, 22 F.Supp.2d 94, 104 (S.D.N.Y. 1998), *vacated in part on other grounds*, 187 F.R.D. 121 (S.D.N.Y. 1999). As explained by the Commission in another matter:

The requirements of Regulations 1.31 and 1.35 are straightforward. Regulation 1.35(a) required [the registrant] to keep complete and systematic records, ‘together with all pertinent data and memoranda, of all transactions relating to its business of dealing in commodity futures, commodity options’ Further, the rule required [the registrant] to maintain copies of ‘all other records data and memoranda . . . prepared in the course of its business’ *Id.* (emphasis added). . . . The trade sequence reports clearly relate to [the registrant’s] business of dealing in commodity futures and were kept in the course of [the registrant’s] business. Failure to maintain them thus violates Regulations 1.31 and 1.35(a).

In re JCC, Inc., CFTC No. 89-4, 1994 WL 183817, at *13 (May 12, 1994), *aff’d sub nom. JCC, Inc. v. CFTC*, 63 F.3d 1557 (11th Cir. 1995).

RBCCM failed to maintain, preserve, and promptly produce for inspection complete and systematic records of its wash EFP transactions. RBCCM thus violated Section 4g(a) of the Act and Regulations 1.31(a) and 1.35(a).

G. RBCCM is Liable for Its Employees’ Acts and Omissions

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and 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 employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation or trust. Pursuant to Section 2(a)(1)(B) and Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g., Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1998); *but see CFTC v. Gibraltar Monetary Corp.*, 575 F.3d 1180, 1188-89 (11th Cir. 2009) (Section 2(a)(1)(B) of the Act and Regulation 1.2 codify common law principal agent liability).

The foregoing acts, omissions, and failures of RBCCM’s employees occurred within the scope of their employment, office, or agency with RBCCM; therefore, pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2, RBCCM is liable for those acts, omissions, and failures

in violation of Sections 4c(a) and 4g of the Act, and Regulations 1.11(e), 1.31, 1.35, 1.38, 3.3(e), and 166.3.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that during the Relevant Period RBCCM violated Sections 4c(a) and 4g of the Act, 7 U.S.C. §§ 6c(a), 6g (2012), and Regulations 1.11(e), 1.31, 1.35, 1.38, 3.3(e), and 166.3, 17 C.F.R. §§ 1.11(e), 1.31, 1.35, 1.38, 3.3(e), 166.3 (2018).

V. OFFER OF SETTLEMENT

Respondent has submitted an Offer in which it, 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 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 Commission's Regulations, 17 C.F.R. §§ 148.1-30 (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, §§ 201-53, 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;

- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which RBCCM 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 RBCCM violated Sections 4c(a) and 4g of the Act, 7 U.S.C. §§ 6c(a), 6g (2012), and Regulations 1.11(e), 1.31, 1.35, 1.38, 3.3(e), and 166.3, 17 C.F.R. §§ 1.11(e), 1.31, 1.35, 1.38, 3.3(e), 166.3 (2018);
 2. Orders RBCCM to cease and desist from violating Sections 4c(a) and 4g of the Act and Regulations 1.11(e), 1.31, 1.35, 1.38, 3.3(e), and 166.3;
 3. Orders RBCCM to pay a civil monetary penalty in the amount of five million dollars (\$5,000,000), plus post-judgment interest; and
 4. Orders RBCCM 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. RBCCM shall cease and desist from violating Sections 4c(a) and 4g of the Act, 7 U.S.C. §§ 6c(a), 6g (2012), and Regulations 1.11(e), 1.31, 1.35, 1.38, 3.3(e), and 166.3, 17 C.F.R. §§ 1.11(e), 1.31, 1.35, 1.38, 3.3(e), 166.3 (2018).
- B. RBCCM shall pay a civil monetary penalty in the amount of five million dollars (\$5,000,000) ("CMP Obligation"). If the CMP Obligation is not paid immediately, 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).
- C. RBCCM 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 by other than 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 by electronic funds transfer is chosen, RBCCM shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. RBCCM shall accompany payment of the CMP Obligation with a cover letter that identifies RBCCM and the name and docket number of this proceeding. RBCCM shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, N.W., Washington, DC 20581.

- D. RBCCM and its successors and assigns shall comply with the following conditions and undertakings set forth in its Offer:
1. Public Statements: RBCCM agrees that neither it nor any of its successors, 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 RBCCM's:(i) testimonial obligations or (ii) right to take legal positions in other proceedings to which the Commission is not a party. RBCCM and its successors and assigns 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 with the Commission: For a period of three years, Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to, or arising from: this action; the factual subject matters of this action; and/or the legal provisions at issue in 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, subject to applicable laws and regulations, 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 trial;
 - c. appoint Respondent's attorney as agent to receive service of such notices and subpoenas;


- 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; and
 - e. not to engage inappropriately in the following uncooperative conduct:
 - A. fail to respond in a reasonable amount of time to the Division's requests for productions of records required to be maintained by law;
 - B. fail to respond in a reasonably complete manner to the Division's requests for production of records required to be maintained by law;
 - C. fail to respond in a reasonable amount of time to a Division subpoena for records;
 - D. fail to respond in a reasonably complete manner to a Division subpoena for records;
 - E. fail to produce in a reasonable amount of time records subject to the cooperation provision of an administrative or court order that names RBCCM as respondent or defendant;
 - F. fail to produce in a reasonably complete manner records subject to the cooperation provision of an administrative or court order that names RBCCM as respondent or defendant;
 - G. claim that information is not available while knowing that it is;
 - H. fail to take steps to preserve subpoenaed records under RBCCM's control;
 - I. advise or direct employees or their counsel not to cooperate fully or openly with a Division investigation;
 - J. engage in evasive, misleading or obstructive conduct during Division investigative testimony or interviews; and
 - K. fail to search computer hard drives properly for documents, data, and electronic images that are subject to subpoena.
3. Partial Satisfaction: RBCCM understands and agrees that acceptance by the Commission of partial payment of RBCCM'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 RBCCM satisfies in full its CMP Obligation as set forth in this Order, RBCCM shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

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: September 30, 2019