

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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3:57 pm, Jan 21, 2020

In the Matter of:

Propex Derivatives Pty Ltd,

Respondent.

CFTC Docket No. 20-12

**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 July 2012 through March 2017 (“Relevant Period”), Propex Derivatives Pty Ltd. (“Propex”) violated Section 4c(a)(5)(C) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6c(a)(5)(C) (2018). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Propex 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, Propex 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, except to the extent that Propex admits those findings in any related action against Propex by, or any agreement with, the United States Department of Justice (“DOJ”) or any other governmental agency or office, Propex 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 Propex 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. Propex 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. Propex 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

During the Relevant Period, Propex, by and through a Propex trader (“Trader A”), engaged in thousands of instances of the disruptive trading practice known as “spoofing” (bidding or offering with the intent to cancel the bid or offer before execution) in the E-mini S&P 500 futures contracts traded on the Chicago Mercantile Exchange (“CME”), a futures exchange and designated contract market which is owned and operated by CME Group Inc. This conduct violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018).

B. RESPONDENT

Propex Derivatives Pty Ltd. is a proprietary trading firm headquartered in Australia. Trader A traded on behalf of Propex for approximately nine years—a time period covering all of the spoofing conduct described herein. Propex has never been registered with the Commission.

C. FACTS

1. Spoofing

During the Relevant Period, Trader A engaged in proprietary trading in commodity futures markets on behalf of Propex. On thousands of occasions during the Relevant Period, Trader A placed bids and offers for E-mini S&P 500 futures contracts with the intent to cancel the bids and offers before execution. Trader A’s spoofing activity involved the placement of one or more orders that Trader A wanted to get filled (“Genuine Order(s)”), on one side of the market, typically consisting of one or more passive orders for fewer than fifty contracts collectively; and on the opposite side of the market, placement of one or more orders that Trader A intended to cancel before execution (“Spoof Order(s)”), typically consisting of one or more passive orders for, collectively, five times as many contracts as the Genuine Order(s). Generally, Trader A canceled the Spoof Order(s) shortly after placing them, and often after his Genuine Order(s) were filled.

Trader A traded in Propex’s trading accounts and shared trading profits with Propex. Trader A’s spoofing benefitted Propex financially while also inflicting harm on the markets and other market participants, causing \$464,300 in market losses.

2. Remediation

Propex represents that since this conduct occurred it has engaged in remedial efforts. Among other things, Propex retained an independent consultant in March 2018 to review its policies and procedures and updated those policies following the consultant’s recommendations; developed and implemented an automated trade surveillance system, which includes surveillance for manipulative and deceptive trading such as spoofing; assigned an experienced, senior executive to review automated trade surveillance alerts; and established periodic compliance training for all traders, as well as Propex’s leadership.

III. LEGAL DISCUSSION

A. Spoofing in Violation of Section 4c(a)(5)(C) of the Act

Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018), 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 the execution).” *See, e.g., United States v. Coscia*, 866 F.3d 782, 792-93 (7th Cir. 2017) (holding that because the Act clearly defines spoofing, it provides adequate notice of prohibited conduct), *cert denied*, 138 S. Ct. 1989 (2018).

As described above, during the Relevant Period, Propex, by and through the acts of Trader A, placed bids and offers for futures contracts listed on CME, a registered entity, with the intent to cancel those bids and offers before they were executed. By engaging in this conduct, Propex violated Section 4c(a)(5)(C) of the Act. *See CFTC v. Oystacher*, 203 F. Supp. 3d 934, 942 (N.D. Ill. 2016) (denying motion for judgment on the pleadings, holding that allegations of placing “both bids and offers with the intent to cancel those bids or offers before execution” constitutes “trading behavior [that] falls within the Spoofing Statute’s defined prohibition”).

B. Propex Is Liable for the Acts of Its Agent

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2019), provide that “[t]he 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) of the Act and Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g., Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988); *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *CFTC v. Byrnes*, 58 F. Supp. 3d 319, 324 (S.D.N.Y. 2014).

Trader A engaged in the conduct described herein within the scope of his agency with Propex; therefore, pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2, Propex is liable for those acts, omissions, and failures in violation of the provisions of the Act and Regulations cited above.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Propex violated Section 4c(a)(5)(C), 7 U.S.C. § 6c(a)(5)(C) (2018).

V. OFFER OF SETTLEMENT

Propex has submitted the Offer in which, without admitting or denying the findings and conclusions herein, except to the extent that Propex admits those findings in any related action

against Propex by, or any agreement with, DOJ or any other governmental agency or office, Propex:

- 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 (2018) 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 (2019), 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 Propex has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
 - 1. Makes findings by the Commission that Propex violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018);
 - 2. Orders Propex to cease and desist from violating Section 4c(a)(5)(C) of the Act;
 - 3. Orders Propex to pay restitution in the amount of four hundred sixty-four thousand, three hundred dollars (\$464,300), plus post-judgment interest within

fifteen business days of the date of the entry of this Order; provided, however, that the restitution will be offset by the amount of any restitution payment made pursuant to the Deferred Prosecution Agreement between Propex and DOJ dated January 19, 2020 (“DPA”);

4. Orders Propex to pay a civil monetary penalty in the amount of four hundred sixty-two thousand, two hundred seventy-one dollars (\$462,271), plus post-judgment interest according to the terms set forth below; provided, however, that the civil monetary penalty will be offset by the amount of any criminal monetary penalty paid pursuant to the DPA; and
 5. Orders Propex 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, including, but not limited to, Propex’s undertaking to pay disgorgement in the amount of seventy-three thousand, four hundred twenty-nine dollars (\$73,429), plus post-judgment interest according to the terms set forth below; provided, however, that the disgorgement will be offset by the amount of any criminal disgorgement payment made pursuant to the DPA.
- F. Represents that since learning of Trader A’s misconduct, Propex has proactively engaged in remedial measures relating to its futures trading. Among other things, Propex:
1. retained an independent consultant in March 2018 to review its policies and procedures and updated those policies following the consultant’s recommendations;
 2. developed and implemented an automated trade surveillance system, which includes surveillance for manipulative and deceptive trading such as spoofing;
 3. assigned an experienced, senior executive to review automated trade surveillance alerts; and
 4. established periodic compliance training for all traders, as well as Propex’s leadership.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Propex and its successors and assigns shall cease and desist from violating Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018).
- B. Propex shall pay restitution in the amount of four hundred sixty-four thousand, three hundred dollars (\$464,300) (“Restitution Obligation”), within fifteen business days of the date of the entry of this Order. If the Restitution Obligation is not paid in full or otherwise satisfied within fifteen business days of the date of the entry of this Order, then

post-judgment interest shall accrue on the Restitution Obligation beginning on the date of the 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).

The Restitution Obligation will be offset by the amount of any restitution payment made pursuant to the DPA. Propex shall provide proof of any payment under the DPA, including the case name(s) and number(s) in connection with which such payment has been made, and the amount by which the Restitution Obligation is to be reduced, within ten days of making such payment to:

Charles Marvine
Deputy Director, Division of Enforcement
Commodity Futures Trading Commission
4900 Main Street, Suite 500
Kansas City, MO 64112

The Commission appoints the National Futures Association (“NFA”) to receive payments of restitution and any post-judgment interest from Propex and handle the distribution of payments to any persons designated to receive restitution. As provided in the DPA, DOJ will serve as the claims administrator with respect to the restitution payment received pursuant to the DPA and shall have sole discretion to determine how the restitution payment will be disbursed. The NFA shall receive such payment into an account designated the “Propex Victim Compensation Settlement Fund.” Because the NFA is not being specially compensated for these services, and these services are outside the normal duties of the NFA, it shall not be liable for any action or inaction arising from its appointment in this matter other than actions involving fraud.

- C. Propex shall pay a civil monetary penalty in the amount of four hundred sixty-two thousand, two hundred seventy-one dollars (\$462,271), plus post-judgment interest (“CMP Obligation”). Post-judgment interest shall accrue on the CMP Obligation beginning on the date following entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of the entry of this Order pursuant to 28 U.S.C. § 1961.

Propex shall satisfy the CMP Obligation by making payments as follows: \$154,091 to be paid within one year of the entry of this Order; \$154,090 to be paid within two years of the entry of this Order; and \$154,090 to be paid within three years of the entry of this Order. Payments shall be deemed made on the date they are received by the Commission or DOJ. Post-judgment interest will be waived for any amounts paid in compliance with the above deadlines.

The CMP Obligation will be offset by the amount of any criminal monetary penalty paid pursuant to the DPA. Propex shall provide (to the persons and addresses listed below) proof of any payment under the DPA, including the case name(s) and number(s) in connection with which such payment has been made, and the amount by which the CMP Obligation is to be reduced, within ten days of making such payment.

Propex shall pay any portion of the CMP Obligation that has not been offset 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, 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 facsimile
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic transfer, Propex shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Propex shall accompany payment of the CMP Obligation with a cover letter that identifies Propex and the name and docket number of this proceeding. Propex 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.

- D. Propex and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Propex 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 Propex's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Propex and its successors and assigns shall comply with this Order, 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. Disgorgement: Propex agrees to pay disgorgement in the amount of seventy-three thousand, four hundred twenty-nine dollars (\$73,429) ("Disgorgement Obligation"), plus post-judgment interest, according to the payment terms above. Post-judgment interest shall accrue on the Disgorgement Obligation beginning on the date of the entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of the entry of this Order pursuant to 28 U.S.C. § 1961.

Propex shall satisfy the Disgorgement Obligation by making payments as follows: \$24,476 to be paid within one year of the entry of this Order; \$24,477 to be paid within two years of the entry of this Order; and \$24,476 to be paid within three years of the entry of this Order. Payments shall be deemed made on the date they are received by the Commission or DOJ. Post-judgment interest will be waived for any amounts paid in compliance with the above deadlines.

The Disgorgement Obligation will be offset by the amount of any criminal disgorgement payment made pursuant to the DPA. Propex shall provide (to the persons and addresses listed below) proof of any payment under the DPA, including the case name(s) and number(s) in connection with which such payment has been made, and the amount by which the Disgorgement Obligation is to be reduced, within ten days of making such payment.

Propex shall pay any portion of the Disgorgement Obligation that has not been offset 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, the payment should 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 facsimile
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic transfer, Propex shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Propex shall accompany payment of the Disgorgement Obligation with a cover letter that identifies Propex and the name and docket number of this proceeding. Propex 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.

3. Acceleration Clause: If any payment is not made by the date required by this Order, the entire outstanding balance of the CMP Obligation and Disgorgement Obligation, plus any additional post-judgment interest that has accrued (and has not been waived pursuant to an earlier payment), shall be due and payable immediately, without further application.

4. Cooperation with the Commission: Propex shall cooperate fully and expeditiously with the Commission, including the Division, in this action and in any current or future Commission investigation or action related thereto. Propex shall also cooperate with the Commission in any investigation, civil litigation, or administrative proceeding related to, or arising from, the subject matter of this proceeding. Propex's cooperation shall continue for a period of five years from the date of entry of this Order. As part of such cooperation, Propex agrees to:
- a. Preserve and produce to the Commission in a responsive and prompt manner, as requested by Division staff, all non-privileged documents, information, and other materials wherever located, including but not limited to audio files, electronic communications, and trading records and data, in the possession, custody, or control of Propex;
 - b. Comply fully, promptly, completely, and truthfully, subject to any legally recognized privilege, with any inquiries or requests for information and documents by the Commission;
 - c. Identify and authenticate relevant documents and other evidentiary materials, execute affidavits or declarations, and provide a corporate representative to testify completely and truthfully at depositions, trial, and other judicial proceedings, when requested to do so by Division staff;
 - d. Use its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Propex, regardless of the individual's location and at such a 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 trial, proceeding, or investigation; and
 - e. Subject to applicable laws and regulations, use its best efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee, or agent of Propex.
5. Partial Satisfaction. Propex understands and agrees that any acceptance by the Commission of partial satisfaction of Propex's Restitution Obligation, CMP Obligation, or Disgorgement 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.
6. Change of Address: Until such time as Propex satisfies in full its Restitution Obligation, CMP Obligation, and Disgorgement Obligation as set forth in this Order, Propex shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten days of the change.

7. Remediation: As set forth above, Propex represents that it has already undertaken and continues to undertake remedial measures to enhance its policies, procedures, and supervisory structures, with specific emphasis on prohibitions against spoofing. Propex shall maintain and update its compliance program as appropriate to effectively detect and deter violations of the Act and shall comply with the obligations relating to its corporate compliance program and reporting requirements as set forth in Attachments C and D to the DPA.

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: January 21, 2020