

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

U.S. COMMODITY FUTURES TRADING)
COMMISSION,)

Plaintiff,)

v.)

WILLIAM BYRNES, CHRISTOPHER)
CURTIN, THE NEW YORK MERCANTILE)
EXCHANGE, INC., and RON EIBSCHUTZ,)

Defendants.)

No. 13 Civ. 1174 (VSB)

ECF Case

**CONSENT ORDER FOR PERMANENT INJUNCTION, CIVIL MONETARY PENALTY
AND OTHER EQUITABLE RELIEF AGAINST DEFENDANT RON EIBSCHUTZ**

I. INTRODUCTION

On February 21, 2013, Plaintiff U.S. Commodity Futures Trading Commission (“Commission”) filed a Complaint against Defendants William Byrnes (“Byrnes”), Christopher Curtin (“Curtin”), and the New York Mercantile Exchange, Inc. (“NYMEX”) seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1–26 (2018), and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. pts. 1-190 (2019). On May 8, 2013, the Commission filed an amended complaint adding Ron Eibschutz as a defendant (the “Amended Complaint”), and charging Defendant Eibschutz with aiding and abetting those violations, pursuant to Section 13(a) of the Act, 7 U.S.C. §13c(a).

II. CONSENTS AND AGREEMENTS

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

1. Consents to the entry of this Consent Order for Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief Against Defendant Ron Eibschutz (“Consent Order”);
2. Affirms that he has read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the Commission or any member, officer, agent, or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledges service of the summons and Amended Complaint;
4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018);
5. Admits the jurisdiction of the Commission over the conduct and transactions at issue in this action pursuant to the Act;
6. Admits that venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e);
7. Waives:
 - (a) Any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018) and 28 U.S.C. § 2412 (2018), 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 action;
 - (b) Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 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 action;

- (c) Any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Consent Order; and
- (d) Any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over him for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if Defendant Eibschutz now or in the future resides outside the jurisdiction of this Court;

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

10. Agrees that neither he nor any agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Amended Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Amended Complaint or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect his: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the Commission is not a party. Defendant Eibschutz shall comply with this agreement, and shall undertake all steps necessary to ensure that his agents and/or employees under his authority or control understand and comply with this agreement;

11. Consents to the entry of this Consent Order without admitting or denying the allegations of the Amended Complaint or any findings or conclusions in this Consent Order, except as to jurisdiction and venue, which he admits;

12. Consents to the use of the findings and conclusions in this Consent 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;

13. Does not consent, however, to the use of this Consent Order, or the findings and conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party, other than a: statutory disqualification proceeding; proceeding in bankruptcy, or receivership; or proceeding to enforce the terms of this Order;

14. Agrees to provide immediate notice to this Court and the Commission by certified mail, in the manner required by paragraph 40 of Part VI of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

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

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), as set forth herein. The findings and conclusions in this Consent Order are not binding on any other party to this action.

THE PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

The Parties to this Consent Order

16. Plaintiff U.S. Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act and the Regulations.

17. Defendant Ron Eibschutz is an individual residing in South Orange, New Jersey. At all times relevant to the Amended Complaint, Eibschutz was employed in New York, New York as a broker of energy futures and options. Eibschutz has never been registered with the Commission in any capacity.

Other Participants and Prior Orders

18. NYMEX is a commodity futures and options exchange. NYMEX offers a platform called ClearPort Clearing that gives customers a way to clear trades through NYMEX. At all relevant times, NYMEX was a board of trade designated as a contract market and self-regulatory organization, and a registered entity under the Act. NYMEX's headquarters is located in New York, New York.

19. Byrnes is an individual who resides in New York. From March 2007 through December 2010, Byrnes was employed by NYMEX and worked on the ClearPort Facilitation Desk. Byrnes has never been registered with the Commission in any capacity.

20. Curtin is an individual who resided in New York during the relevant period. From July 2000 through April 2009, Curtin was employed by NYMEX and worked on the ClearPort Facilitation Desk. Curtin has never been registered with the Commission in any capacity.

21. On September 19, 2019, the Court held that “Plaintiff’s motion for partial summary judgment as to the liability of Defendant Eibschutz for aiding and abetting the violations of Section 9(e)(1) [of the Act] by Defendants Byrnes and Curtin is granted, to the extent that such violations are found at trial.” *CFTC v. Byrnes*, No. 13-CV-1174, 2019 WL 4515209, at *12 (Sept. 19, 2019).

22. On August 3, 2020, this Court approved a settlement between Plaintiff and Defendants Byrnes, Curtin and NYMEX, and entered the *Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendants William Byrnes, Christopher Curtin, and the New York Mercantile Exchange, Inc.* (“Prior Consent Order”) (Docket No. 227).

Aiding and Abetting Disclosures of Material, Non-Public Trade Information

23. On numerous occasions between 2008 and 2010, Eibschutz solicited and received from Byrnes and Curtin confidential information about derivatives trading activity that Byrnes and Curtin obtained during the course of their employment at NYMEX.

24. The disclosures by Byrnes and Curtin to Eibschutz pertained to trading activity in options on commodity futures, principally in the crude oil and natural gas markets.

25. Byrnes and Curtin disclosed to Eibschutz, among other things, the identities of counterparties to specific options trades, whether a particular counterparty purchased or sold the option, whether it was a call or a put, the volume of contracts traded, the expiry, the strike price, and the trade price.

26. Byrnes’ and Curtin’s disclosures to Eibschutz contained material nonpublic information they obtained through their special access as NYMEX employees.

27. At the time, Byrnes and Curtin knew or recklessly disregarded that they should not disclose the trade information to Eibschutz, and that the information was both nonpublic and material.

28. At all times relevant hereto, Defendant Eibschutz acted willfully.

29. Without admitting or denying the allegations of the Amended Complaint or any findings or conclusions in this Consent Order, except as to jurisdiction and venue, which he admits, Defendant Eibschutz consents to findings that Byrnes and Curtin violated Section 9(e)(1) of the Act and Regulation 1.59, and that Defendant Eibschutz willfully aided and abetted Byrnes and Curtin's wrongful conduct.

B. Conclusions of Law

Jurisdiction and Venue

30. This Court possesses jurisdiction over this action pursuant to 28 U.S.C. § 1331 (2018) (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (2018) (providing that U.S. district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2018), provides that the Commission may bring actions for injunctive relief or to enforce compliance with the Act or any rule, regulation, or order thereunder in the proper district court of the United States whenever it shall appear to the Commission that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

31. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2018), because the acts or practices in violation of the Act occurred within this District.

32. By the conduct described in paragraphs 23 through 28 above, Defendant Ron Eibschutz willfully aided, abetted, counseled and worked in combination and in concert with Byrnes and Curtin's wrongful conduct. Therefore, pursuant to Section 13(a) of the Act, 7 U.S.C.

§ 13c(a) (2012), Defendant Eibschutz is liable for Byrnes and Curtin's violations of Section 9(e)(1) of the Act and Regulation 1.59.

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

IV. INJUNCTIVE RELIEF

IT IS HEREBY ORDERED THAT:

34. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), Defendant Eibschutz is permanently restrained, enjoined and prohibited from directly or indirectly engaging in any conduct in violation of Section 9(e)(1) of the Act, 7 U.S.C. § 13(e)(1), and Regulation 1.59(d), 17 C.F.R. § 1.59, or aiding and abetting such violations.

35. Defendant Eibschutz is also permanently restrained, enjoined and prohibited from directly or indirectly:

- (a) Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2018));
- (b) Entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019), for his own personal account or for any account in which he has a direct or indirect interest;
- (c) Having any commodity interests traded on his behalf;
- (d) Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
- (e) Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- (f) Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such

registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2019); and/or

- (g) Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent or any other officer or employee of any person (as that term is defined in 7 U.S.C. § 1a(38)), registered, exempted from registration or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9).

V. CIVIL MONETARY PENALTY

36. Defendant Eibschutz shall pay a civil monetary penalty in the amount of \$75,000 (seventy-five thousand dollars) (the “CMP Obligation”), within thirty days of the date of the entry of this Consent Order.

37. If the CMP Obligation is not paid in full within thirty days of the date of entry of this Consent Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961.

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

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

VI. MISCELLANEOUS PROVISIONS

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

Notice to the Commission:

Manal M. Sultan
Deputy Director, Division of Enforcement
Commodity Futures Trading Commission
140 Broadway, 19th Floor
New York, NY 10005
646-746-9761
msultan@cftc.gov

Notice to Eibschutz:

c/o Paul Shechtman, Esq.
Bracewell LLP
1251 Avenue of the Americas, 49th Floor
New York, NY 10020-1100
212-508-6107
paul.shechtman@bracewelllaw.com

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

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

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

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

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

45. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Consent Order and for all other purposes related to this

action, including any motion by Defendant Eibschutz to modify or for relief from the terms of this Consent Order.

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

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

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

49. Agreements and Undertakings: Defendant Eibschutz shall comply with all of the undertakings and agreements set forth in this Consent Order.

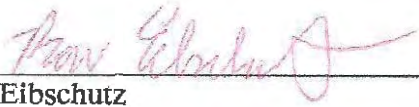
There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant Ron Eibschutz* forthwith and without further notice.

IT IS SO ORDERED on this 19th day of February, 2021.



Vernon S. Broderick

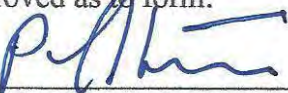
CONSENTED TO AND APPROVED BY: United States District Judge



Ron Eibschutz

Date: 12/20/20

Approved as to form:



Paul Shechtman, Esq.
Bracewell LLP
1251 Avenue of the Americas, 49th Floor
New York, NY 10020
Phone: 212-508-6107
Attorney for Ron Eibschutz

U.S. Commodity Futures Trading
Commission

Patryk J. Chudy
David W. MacGregor (admitted *pro hac vice*)
Patrick Daly
Alejandra de Urioste
Gabriella Geanuleas
David C. Newman
James G. Wheaton

Division of Enforcement
140 Broadway, 19th Floor
New York, New York 10005
Phone: 646-746-9700

Date: _____

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order for Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief Against Defendant Ron Eibschutz* forthwith and without further notice.

IT IS SO ORDERED on this _____ day of _____, 202_.

Vernon C. Broderick
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:

Ron Eibschutz

Date: _____

Approved as to form:

Paul Shechtman, Esq.
Bracewell LLP
1251 Avenue of the Americas, 49th Floor
New York, NY 10020
Phone: 212-508-6107
Attorney for Ron Eibschutz

Patryk Chudy

U.S. Commodity Futures Trading
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Date: February 18, 2021