

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 CFTC 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 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 CFTC 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 (2020), 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 Zhao 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 of his 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 Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the 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 CFTC is not a party. Zhao shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement;

11. Admits to all of the findings made in this Consent Order and all of the allegations in the Complaint.

12. In *United States v. Zhao*, No. 18-cr-24 (N.D. Ill.), Zhao pleaded guilty to one count of spoofing in violation of Sections 4c(a)(5)(C) and 9(a)(2) of the Act, 7 U.S.C. §§ 6c(a)(5)(C), 13(a)(2) (2018), and in connection with that plea, admitted the facts set out in the Plea Agreement. See Plea Agreement, *United States v. Zhao*, No. 18-cr-24 (N.D. Ill. Dec. 26, 2018), ECF No. 49. A copy of the Plea Agreement is attached as Exhibit A to this Order, and those same facts are admitted as if set forth in this Order;

13. Agrees to provide immediate notice to this Court and the CFTC by certified mail, in the manner required by paragraph 61 of Part V of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

14. 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 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 PARTIES AGREE AND THE COURT HEREBY FINDS:

A. Findings of Fact

i. The Parties to this Consent Order

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

16. Zhao is a resident of New South Wales, Australia. During the times relevant to this action, Zhao was employed by Propex Derivatives Pty Ltd. (“Propex”), a proprietary trading firm. Zhao has never been registered with the CFTC in any capacity.

ii. Futures Trading Background

17. A futures contract is an agreement to purchase or sell a commodity for delivery or cash settlement in the future at a specified price. A futures contract traded on an exchange has standard, non-negotiable contract specifications.

18. The E-mini S&P 500 Index futures contract (the “ES contract”) is traded on CME, a registered entity. There are four ES contract delivery months: March, June, September, and

December. The ES contract is cash settled so no delivery of the stocks that make up the underlying index takes place.

19. The ES contract trades 24 hours per day from 5:00 PM Central Time on Sunday night to 4:00 PM Central Time on Friday afternoon, except for a 15-minute window each day when trading halts. The trading day for the ES contract is commonly regarded as consisting of two trading sessions: the daytime session and the overnight session. The daytime session corresponds with open-outcry trading at the CME and runs from 8:30 AM to 3:15 PM Central Time. The overnight session begins after the 15-minute trading halt and runs from 3:30 PM to 8:29:59 AM Central Time the next day. The daytime session corresponds with, but does not perfectly overlap, the trading day for the stocks that make up the underlying index, which runs from 8:30 AM to 3:00 PM Central Time on the NYSE and NASDAQ exchanges.

20. The value of the ES contract is the S&P 500 stock index multiplied by fifty dollars. The price of the ES contract is quoted in index points, and the minimum price change allowed during a trading session is one-quarter of an index point (0.25); thus, if a trader wished to place an order above the last traded ES contract price of 2648.25 points, that trader would have to place the order at 2648.50 points or higher. This minimum price change is commonly called a “tick.”

21. An “order,” in the context of electronic exchange trading, is a request submitted to an exchange to buy (that is, “bid”) or sell (that is, “offer” or “ask”) a certain number of a specified futures contract. An order is for one or more contracts. Contracts may also be called “lots,” among other things. Orders are entered into the exchange’s order book. When there exists both a willing buyer and seller for a contract at a given price, a transaction occurs and is referred to as a “fill” (or a “trade” or “execution”). At any time before the order is fully filled,

the trader can “cancel” the order. When an order is canceled, the contracts that have not yet been bought or sold are pulled from the order book.

22. Each trader can view the aggregate number of contracts and orders that all traders are actively bidding or offering at a given price level. Only the total numbers of orders and contracts at various price levels are visible, not the identities of the traders who placed the orders. The best-bid level, or first-bid level, is the highest price at which someone is willing to buy. The best-ask level, or first-ask level, is the lowest price at which someone is willing to sell. The bid-ask spread is the difference between those two prices.

23. Traders can view the aggregate resting contracts and orders up to the tenth-bid and tenth-ask levels. This combined bid and ask information is often referred to as the visible order book and represents the visible market depth. Traders often consider information in the order book when making trading decisions.

24. An “aggressive” order is an order that crosses the bid-ask spread. On the buy side of the market, an aggressive buy order is placed at the best-ask price or higher so, put simply, it is an offer to buy at a price that another trader is currently willing to sell. On the sell side of the market, an aggressive sell order is placed at the best-bid price or lower so, put simply, it is an offer to sell at a price that another trader is currently willing to buy. Accordingly, aggressive orders are guaranteed to execute, at least partially, immediately after being placed.

25. A “passive” order, on the other hand, does not give up the spread in price. On the buy side of the market, a passive buy order is placed at the best-bid price or lower so, put simply, it is an offer to buy at a price that is lower than the price that other traders are currently willing to sell. On the sell side of the market, a passive sell order is placed at the best-ask price or higher, so, put simply, it is an offer to sell at a price that is higher than the price that other traders are

currently willing to buy. Passive orders rest for at least some amount of time after being placed and are not guaranteed to execute.

26. The ES contract is traded electronically on the CME Globex trading system (“Globex”). Globex employs a matching algorithm to match bids and offers for execution. The matching algorithm for the ES market is known as “FIFO,” which denotes first-in, first-out. Under the FIFO method, orders on the same side of the market (i.e., the buy side or sell side) and at the same price are filled based on time priority; thus, with a few exceptions not pertinent here, the order that was placed first trades first, irrespective of the order’s size.

iii. Zhao’s Manipulative and Deceptive Scheme

27. Zhao worked as a trader at Propex for nearly nine years. In that role, he traded futures contracts on U.S. and international exchanges. Zhao did not trade on behalf of any party other than Propex. He shared any profits generated from his trading with Propex. Zhao’s direct supervisor was Propex’s CEO.

28. From at least July 2012 through at least March 2017 (the “Relevant Period”), and while employed by Propex, Zhao engaged in a manipulative and deceptive scheme (the “Scheme”) that consisted of the following general pattern: (1) placing one or more passive small orders (that is, fewer than fifty contracts) on one side of the market, which he intended to execute (“Genuine Orders”); (2) placing one or more passive large orders (that is, fifty contracts or more) on the opposite side of the market, within two minutes of placing the Genuine Order and while the Genuine Order is still pending, which he intended to cancel (“Spoof Orders”); (3) reaching at least a five-to-one total contract size imbalance between his Spoof Orders and Genuine Orders, respectively; and (4) canceling the Spoof Orders within two seconds after they were placed.

Each instance of this pattern comprises a single “Event.” Collectively, “Genuine Orders” and “Spoof Orders” are referred to as “Event Orders.”

29. Zhao’s Scheme was designed to benefit financially from market participants’ reactions to his Spoof Orders. The following is a simplified explanation of how his Scheme was intended to work, using a hypothetical example of a Spoof Order on the buy side. A large Spoof Order to buy would result in an increase in demand in the order book (i.e., create or add to an order book imbalance in which orders to buy outweigh orders to sell). This increase would be visible to other market participants and may lead them to conclude that the price is likely to rise. This conclusion, in turn, would impact market participants’ decisions, including prompting some to attempt to purchase contracts before the predicted rise in price happens. In such a case, these participants would place aggressive orders to buy (i.e., at a higher price than the currently resting bids in the market), making execution of orders resting on the opposite side of the Spoof Order more likely. Finally, these bids would enable orders on the opposite side of the Spoof Order—including Zhao’s Genuine Orders—to sell sooner, at a better price, or in larger quantities than they otherwise would.

30. Zhao carried out his Scheme on the ES contract market traded on CME. For some or all of the Relevant Period, Zhao traded manually, by submitting orders, cancelations, and modifications using a computer mouse or keyboard.

31. During the Relevant Period, as part of the ongoing Scheme, Zhao engaged in approximately 2,300 Events. As part of those Events, Zhao entered about 2,300 Genuine Orders and 3,100 Spoof Orders, with all of the Spoof Orders, according to the pattern described herein, quickly being canceled.

32. Zhao intended to cancel the Spoof Orders before execution, and often did so after his Genuine Orders were filled. The predictable sequence inherent in Zhao's spoofing pattern, which he engaged in thousands of times, demonstrates that Zhao was not reacting to market changes when he canceled the Spoof Orders; rather, he was carrying out a predetermined strategy that was not dependent on market conditions.

33. By engaging in the Scheme as described herein, Zhao entered Spoof Orders either to intentionally send a false signal to the market that he actually wanted to buy or sell the number of contracts specified in the Spoof Orders, or while recklessly disregarding the fact that entering his spoof orders would send such a false signal—a signal that injected false information about supply and demand into the market that could affect market activity. Zhao engaged in this Scheme to trick other market participants into executing against his Genuine Orders on the opposite side of the market—allowing them to fill sooner, at a better price, or in larger quantities than they otherwise would. Zhao knew or recklessly disregarded that the Spoof Orders would create the false appearance of market depth and result in misinformation, thereby luring market participants to trade based on Zhao's spoofing. The risk that the Spoof Orders could mislead other market participants into believing there was genuine interest in purchasing or selling the specified number of contracts represented by Zhao's Spoof Orders was so obvious that Zhao must have been aware of it. He knew that his Spoof Orders would appear in the order book and that traders often consider order-book information in making trading decisions; thus, Zhao was, at least, reckless with respect to the danger that his Spoof Orders would mislead other market participants.

34. Although Zhao's Spoof Orders were visible to the rest of the market, his identity as the originator of those orders was not. Only the total numbers of orders and contracts at

various price levels are visible, not the number of traders or identities of the traders who placed the orders. Accordingly, Zhao knew that other market participants could not see that the same trader had placed both the Spoof Orders and the Genuine Orders, which might have tipped off market participants that his Spoof Orders were not bona fide.

35. Trading overnight was a key component of Zhao's Scheme and indicative of his wrongful intent. Zhao carried out his Scheme more than 99% of the time during overnight sessions, when trading volume and volatility were substantially decreased. As a result of the reduced volume and volatility depth during overnight sessions, Zhao was able to use smaller Spoof Orders (with concomitant lower financial risk) to provoke the market reactions he desired.

36. The near-perfect correlation between Zhao's Scheme and his use of overnight sessions cannot be explained by his residing in Australia, where the overnight session largely occurs during daylight hours. Setting the Scheme aside, Zhao often traded during daytime sessions, which overlaps with nighttime in Australia. Indeed, nearly one-third of Zhao's non-Event orders (i.e., orders that were not part of the Scheme) were placed during daytime sessions; thus, Zhao's focus on carrying out his Scheme almost exclusively during overnight sessions is indicative of his wrongful intent.

37. Further, Zhao's trading pattern shows he avoided placing large Spoof Orders when they were more likely to execute. Had Zhao actually wanted to trade the quantities in his Spoof Orders, he would have placed similar-size orders during daytime sessions, when trading volume was higher and the larger quantities were more likely to execute; however, he did not. As reflected in the table below, during the Relevant Period, Zhao placed only about 2% of his large orders (both Spoof and non-Spoof) during daytime sessions. By contrast, Zhao placed about 29% of his small orders during daytime sessions; thus, Zhao avoided placing large orders

when they had better chances of executing, but he did not similarly curtail his small orders. This further indicates that large order sizes were not an aspect of Zhao's legitimate trading. Rather, they were part of a scheme to mislead market participants by falsely signaling increased supply or demand for the purpose of luring market participants to trade based on his spoofing.

Orders by Time of Day During the Relevant Period <u>Event and Non-Event Combined</u> (values are approximate)			
	Total Number of Orders	% Placed in Daytime Sessions	% Placed in Overnight Sessions
Large orders (≥ 50 contracts)	3,790	2%	98%
Small orders (<50 contracts)	62,700	29%	71%

38. Zhao's Scheme frequently worked as planned; that is, his Spoof Orders tricked other market participants into executing against his Genuine Orders. However, there were times that Zhao's Genuine Orders continued to sit, unfilled, even after he placed and canceled his Spoof Orders; thus, not all of the Events resulted in executions of Zhao's Genuine Orders. Still, Zhao's Genuine Orders seldom terminated in cancellations, again demonstrating the differing intent behind his Spoof and Genuine Orders. Even though, by definition, 100% of Spoof Orders terminated with at least a partial cancellation, the same was true for only about 22% of the Genuine Orders. The difference is that Zhao wanted his Genuine Orders to execute.

39. Zhao also took steps to protect his Spoof Orders from execution. For example, he canceled the Spoof Orders almost immediately after placing them; their median cancellation time was 737 milliseconds, as illustrated in the table below. By contrast, on those rarer occasions when Zhao canceled his Genuine Orders, the median cancellation time was 106 seconds. This

means that Zhao allowed his Genuine Orders to rest prior to cancelation for a much longer period than his Spoof Orders. The consistently fast cancelation times for Zhao's Spoof Orders reflect his intent to cancel them from the outset.

Cancelations of Event Orders (values are approximate)	
	Median Time to Cancelation
Spoof Orders	0.737 seconds
Genuine Orders	106 seconds

40. Zhao's efforts to avoid execution of his Spoof Order were successful. This is reflected in vastly diverging rates in which Zhao's Genuine and Spoof Orders were partially or fully filled (the "hit rate"). As reflected in the table below, Zhao placed approximately 2,300 Genuine Orders during the Relevant Period. Of these, about 79% were hit. By contrast, less than 1% of the approximately 3,100 Spoof Orders were hit. Thus, Zhao's Genuine Orders were about 180 times more likely to be hit. As a general matter, whether an order is hit is not dependent on its size; rather, orders at the same price level execute according to time priority under the FIFO matching algorithm. Here, the stark contrast in hit rates results from differences in the orders' relative competitiveness, over which Zhao had control, and illustrates his success in avoiding execution of his Spoof Orders.

Orders Hit in Events (values are approximate)			
	Total Orders in Events	Number of Orders Hit	Percentage of Orders Hit
Genuine Orders	2,300	1,800	79%
Spoof Orders	3,100	10	<1%

41. The use of large orders was a hallmark of Zhao's Scheme; he rarely placed large orders otherwise. He placed about 3,800 large orders during the Relevant Period; 82% of those were placed pursuant to the Scheme as Spoof Orders. By contrast, Zhao placed about 62,700 small orders during the Relevant Period. Only about 4% of these orders fell within the Scheme as Genuine Orders. Zhao's limited use of large order sizes, nearly always as part of the Scheme and not as part of a legitimate trading strategy, is indicative of his illegal conduct. He primarily used large orders to send false signals of increased supply or demand to market participants.

iv. Examples of Zhao's Scheme

42. Zhao's Scheme is illustrated in the three Events described below. Detailed trade data associated with these Events is provided in Exhibit A to the Complaint, ECF No. 1 Ex. A.

a. Event Example 1: April 15, 2013

43. Zhao's trading in the early morning of April 15, 2013, constitutes an Event pursuant to his Scheme. *See* Ex. A at 1–8 (displaying detailed trade data). At 1:11:16.287 AM Central Time (denoted in hours, minutes, seconds, and milliseconds), Zhao placed an order to sell one contract (the Genuine Order) at the best-ask level. *See id.* at 1, row 2. About ten seconds later, at 1:11:25.537 AM, Zhao placed an order to buy 151 contracts at the best-bid level (the first Spoof Order). *See id.* at 2, row 33. The first Spoof Order doubled the number of

contracts then resting at that level of the order book, but the order was not at risk of executing until the 151 contracts resting ahead of it executed or were withdrawn. Zhao's first Spoof Order did not immediately induce execution of his Genuine Order, and he canceled it at 1:11:26.240 AM (only 703 milliseconds after placing it). *See id.* at 2, row 47. A short time later, Zhao tried again. At 1:11:33.363 AM, he placed an order to buy 171 contracts at the best-bid level (the second Spoof Order), more than doubling the number of contracts resting at that level of the order book. *See id.* at 3, row 89. This time, Zhao's Genuine Order executed at 1:11:33.366 AM, immediately after the second Spoof Order was placed. *See id.* at 4, row 103. He then canceled his second Spoof Order at 1:11:34.161 AM, within 798 milliseconds of placing it. *See id.* at 8, row 252.

b. Event Example 2: March 5, 2014

44. Zhao's trading in the final hours of March 5, 2014, shows an Event that did not result in execution of the Genuine Order, contrary to Zhao's plan. *See Ex. A* at 9–12. At 22:44:12.924 PM Central Time, Zhao placed an order to buy one contract (the Genuine Order) at the best-bid level. *See id.* at 9, row 2. Three seconds later, at 22:44:15.720 PM, Zhao placed an order to sell 201 contracts (the Spoof Order) at the best-ask level. *See id.* at 9, row 15. Zhao's Spoof Order was nearly 2.5 times the size of the combined orders then resting at that price level of the order book, but it was not at risk of executing until the 82 contracts resting ahead of it executed or were withdrawn. Zhao's Genuine Order did not immediately execute. Zhao canceled his Spoof Order at 22:44:16.394 PM, only 674 milliseconds after placing it. *See id.* at 10, row 40. He let his Genuine Order rest longer, but canceled it as well at 22:44:40.533 PM, about half a minute after placing it. *See id.* at 12, row 97.

c. Event Example 3: March 21, 2016

45. A third example occurred on March 21, 2016. *See* Ex. A at 13–18. At 7:31:28.726 AM Central Time, Zhao placed an order to sell 11 contracts (the Genuine Order) at the best-ask level. *See id.* at 13, row 2. About five seconds later, at 7:31:33.645 AM, Zhao placed an order to buy 82 contracts (the Spoof Order) at the best-bid level. *See id.* at 13, row 441. The Spoof Order was over half the size of the combined orders then resting at that price level, but it was not at risk of executing until the 153 contracts resting ahead of it executed or were withdrawn. Almost immediately, at 7:31:33.980 AM and 7:31:33.981 AM, Zhao’s Genuine Order executed through one trade of one and one trade of ten contracts. *See id.* at 13, rows 456 & 458. Zhao then canceled his Spoof Order at 7:31:34.389 AM, just 744 milliseconds after placing it. *See id.* at 18, row 617.

B. Conclusions of Law

i. Jurisdiction and Venue

46. 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 CFTC 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 CFTC 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.

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

ii. Spoofing

48. By the conduct described in paragraphs 1 through 45 above, Defendant engaged in trading, practices, 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).

49. In placing each Spoof Order, Defendant acted with the intent to cancel the bid or offer before execution in violation of Section 4c(a)(5) of the Act, 7 U.S.C. § 6c(a)(5) (2018).

50. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendant 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.

iii. Use of a Manipulative and Deceptive Device, Scheme, or Artifice

51. By the conduct described in paragraphs 1 through 45 above, Defendant, in connection with a contract for future delivery on a registered entity, intentionally or recklessly: (1) used or employed, or attempted to use or employ, manipulative devices, schemes, or artifices to defraud; or (2) engaged, or attempted to engage, in acts, practices, or courses of business, which operated or would have operated as a fraud or deceit upon market participants.

52. Defendant acted intentionally or recklessly.

53. Through this conduct, Zhao violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2020).

54. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendant 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. PERMANENT INJUNCTION

IT IS HEREBY ORDERED THAT:

55. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018), Defendant is permanently restrained, enjoined and prohibited from directly or indirectly:

- i. engaging 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 in violation of Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018); and
- ii. intentionally or recklessly: (1) using or employing, or attempting to use or employ, manipulative devices, schemes, or artifices to defraud; or (2) engaging or attempting to engage, in acts, practices, or courses of business, which operated or would have operated as a fraud or deceit upon market participants, in violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018).

56. Defendant is also restrained, enjoined and prohibited, for a period of five years from the date of entry of this order, from directly or indirectly:

- i. 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));
- ii. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2020), for his own personal account or for any account in which he a direct or indirect interest;
- iii. Having any commodity interests traded on his behalf;
- iv. 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;

- v. Soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
- vi. 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) (2020); and/or
- vii. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2020)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2018)), 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. RESTITUTION AND DISGORGEMENT

A. Restitution

57. Defendant's violations of the Act and Regulations merit the award of restitution. This Court recognizes, however, that the Commission in a related action against Propex ordered that Propex pay restitution in the amount of four hundred sixty-four thousand, three hundred dollars (\$464,300) in connection with the same conduct at issue in this action. *In re Propex Derivatives Pty. Ltd.*, CFTC No. 20-12, 2020 WL 1157208, *3-4 (Jan. 21, 2020) (ordering that the restitution obligation ordered against Propex "will be offset by the amount of any restitution payment made pursuant to the" Deferred Prosecution Agreement entered into between Propex and the Department of Justice). On February 7, 2020, the Department of Justice notified the court, in the related criminal proceeding against Zhao, that Propex "wired the \$464,300 victim compensation payment." *See* Unopposed Mot. to Finalize Restitution at 2, *United States v. Zhao*, No. 18-cr-24 (N.D. Ill. Feb. 7, 2020), ECF No. 75. Accordingly, because any restitution

merited in this action has been satisfied in full by Propex's payment, restitution is not ordered in this action.

B. Disgorgement

58. Defendant shall pay disgorgement in the amount of twenty-one thousand dollars (\$21,000) ("Disgorgement Obligation"), representing the gains received in connection with such violations, within ten days of the date of the entry of this Consent Order. If the Disgorgement Obligation is not paid in full within ten days of the date of entry of this Consent Order, then post-judgment interest shall accrue on the Disgorgement 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 (2018).

59. Defendant shall pay his Disgorgement 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 shall contact Marie Thorne or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Defendant shall accompany payment of the Disgorgement Obligation with a cover

letter that identifies Defendant and the name and docket number of this proceeding. Defendant 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. Defendant shall also transmit a copy of the cover letter and the form of payment to Charles Marvine, Deputy Director, Commodity Futures Trading Commission, 4900 Main Street, Suite 500, Kansas City, MO 64112.

C. Provision Related to Monetary Payments

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

D. Miscellaneous Provisions

61. **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 Commission:

Charles Marvine
2600 Grand Boulevard, Suite 210
Kansas City, MO 64108

Notice to Defendant:

Jiongsheng Zhao
C/O Theodore T. Poulos
Cotsirilos, Tighe, Streicker, Poulos & Campbell, Ltd.
33 N. Dearborn, Suite 600
Chicago, IL 60602

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

62. **Change of Address/Phone:** Until such time as Defendant satisfies in full his Disgorgement Obligation as set forth in this Consent Order, Defendant shall provide written

notice to the Commission by certified mail of any change to his telephone number and mailing address within ten calendar days of the change.

63. **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.

64. **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.

65. **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.

66. **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 to modify or for relief from the terms of this Consent Order.

67. **Injunctive and Equitable Relief Provisions:** The injunctive and equitable relief provisions of this Consent Order shall be binding upon Defendant, upon any person under his 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.

68. **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 party, 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.

69. **Contempt:** Defendant 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.

70. **Agreements and Undertakings:** Defendant 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 and Other Equitable Relief Against Defendant Jiongsheng Zhao* forthwith and without further notice.

IT IS SO ORDERED on this 4th day of June, 2021.



Honorable John F. Kness
UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:



Jionsheng Zhao

Date: 06/04/2021

Approved as to form:

/s/ Theodore T. Poulos
Theodore T. Poulos
Emily C.R. Vermynen
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Attorneys for Defendant

Dated 4/19/2021

NICHOLAS
SLOEY

Digitally signed by
NICHOLAS SLOEY
Date: 2021.06.02
11:18:34 -05'00'

Nicholas Sloey
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Attorney for Plaintiff

Date: June 2, 2021

Exhibit A

M

FILED
DEC 26 2018
JUDGE JOHN J. THARP, JR.
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

JIONGSHENG (“JIM”) ZHAO

CASE NUMBER: 18 CR 24

PLEA AGREEMENT

1. This Plea Agreement between the Fraud Section, Criminal Division, United States Department of Justice (the “government”) and defendant JIONGSHENG (“JIM”) ZHAO, and his attorney, Theodore T. Poulos, of Cotsirilos, Tighe, Streicker, Poulos & Campbell, Ltd., is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Plea Agreement have agreed upon the following:

Charges in This Case

2. The Information in this case charges the defendant with one count of spoofing, in violation of Title 7, United States Code, Sections 6c(a)(5)(C) and 13(a)(2).

3. The defendant has read the charges against him contained in the Information, and those charges have been fully explained to him by his attorney.

4. The defendant fully understands the nature and elements of the crimes with which he has been charged.

Charge to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, the defendant agrees to enter a voluntary plea of guilty to Count One of the Information, which charges the defendant with one count of spoofing, in violation of Title 7, United States Code, Sections 6c(a)(5)(C) and 13(a)(2).

Factual Basis

6. The defendant will plead guilty because he is in fact guilty of the charges contained in Count One of the Information. In pleading guilty, the defendant admits the facts alleged in Count One of the Information as well as the facts set forth in Paragraph 7 of this Plea Agreement (collectively, the “Facts”). The defendant further admits that the Facts establish his guilt beyond a reasonable doubt.

7. At all relevant times, ZHAO was employed as a trader at Trading Firm A that was headquartered in Sydney, Australia. ZHAO resided and worked in Australia. When trading, ZHAO placed orders manually, meaning he physically clicked his computer mouse or hit keyboard keys to place each order, and physically clicked his mouse or hit keyboard keys to cancel an order. Among other things, ZHAO traded E-mini S&P 500 futures contracts on the Chicago Mercantile Exchange (“CME”), which is a commodities exchange operated by the CME Group Inc., a commodities marketplace located in Chicago, Illinois, with its servers located in the Northern District of Illinois. At all relevant times, the CME was a registered entity, operating as a Designated Contract Market, and subject to regulation by the U.S. Commodity Futures Trading Commission. Market participants trading on the CME were subject to its rules.

Spoof Orders

From approximately July 2012 and continuing through approximately March 2016 (the “Relevant Period”), ZHAO placed thousands of orders on the CME for E-mini S&P 500 futures contracts that, at the time ZHAO placed the orders, he intended to cancel before execution (the “Spoof Orders”). Typically, ZHAO engaged in this trading strategy when ZHAO already had an order for E-mini S&P 500 futures contracts pending in the market that ZHAO did want to execute, but was not being filled (the “Primary Order”). ZHAO would place the Spoof Orders on the opposite side of the

market from the Primary Order with the goal to induce other market participants to trade against ZHAO's Primary Order. At times, ZHAO's Spoof Orders did, in fact, cause other market participants to react and to trade at prices, quantities, and times that they likely otherwise would not have traded, but for ZHAO's Spoof Orders, and which resulted in ZHAO's Primary Order being filled. Frequently, once ZHAO's Spoof Orders served their purpose and his Primary Order was filled, ZHAO quickly cancelled the Spoof Orders. ZHAO's trading strategy was intended to, and did, transmit materially false and misleading liquidity and price information and otherwise deceive other market participants about the existence of supply and demand for E-mini S&P 500 futures contracts. The Spoof Orders were designed to, and did, artificially move the price of E-mini S&P 500 futures contracts in a direction that was favorable to ZHAO, and to the detriment of other market participants.

ZHAO placed the Spoof Orders in order to generate profits (or mitigate losses) for himself and Trading Firm A. ZHAO personally benefited from using Spoof Orders in numerous ways, including by way of continued employment and compensation from Trading Firm A, which compensation was based in part on his trading profits. As part of ZHAO's employment contract with Trading Firm A, during the Relevant Period, Trading Firm A kept a percentage of ZHAO's trading profits, ranging at various times from 20% to 50%. During the Relevant Period, when placing the Spoof Orders, ZHAO (i) was an employee of Trading Firm A, (ii) acted with the intent, at least in part, to benefit Trading Firm A, and (iii) acted within the scope of his authority and employment at Trading Firm A. ZHAO agrees that the United States has calculated that Spoof Orders ZHAO himself placed generated trading gains to himself and Trading Firm A of approximately \$21,000 and caused market losses of approximately \$464,000. ZHAO acted knowingly and willfully in submitting Spoof Orders.

The Spoof Orders constituted foreign and interstate wire communications because ZHAO electronically placed, and caused to be placed, the orders onto the CME from computers at his home or Trading Firm A's offices in Sydney, Australia.

The Spoof Orders included, but were not limited to:

Approx. Date	Approx. Time (Central Time)	Side	Approx. Price	Approx. Number of Contracts in Spoof Order	Approx. Total Value of Spoof Order	Approx. Period of Time Spoof Order Was Active
June 30, 2013	09:37:18.600 PM	Sell	\$1,595.50	151	\$12,046,025.00	0.814 secs
July 12, 2013	02:09:53.733 AM	Buy	\$1,667.25	151	\$12,587,737.50	0.719 secs
July 12, 2013	02:10:06.251 AM	Sell	\$1,667.50	151	\$12,589,625.00	0.826 secs
July 29, 2013	08:33:59.830 PM	Buy	\$1,685.25	201	\$16,936,762.50	0.671 secs
July 29, 2013	08:34:29.003 PM	Sell	\$1,685.50	201	\$16,939,275.00	0.689 secs
August 26, 2013	09:54:50.629 PM	Sell	\$1,652.00	201	\$16,602,600.00	0.752 secs
August 26, 2013	09:54:57.019 PM	Sell	\$1,652.00	201	\$16,602,600.00	0.799 secs
August 27, 2013	11:39:37.772 PM	Buy	\$1,629.00	201	\$16,371,450.00	0.687 secs
August 27, 2013	11:39:57.927 PM	Sell	\$1,629.25	201	\$16,373,962.50	0.705 secs
March 12, 2014	10:52:22.441 PM	Buy	\$1,873.25	201	\$18,826,162.50	0.591 secs
March 24, 2014	12:10:09.804 AM	Buy	\$1,857.00	201	\$18,662,850.00	0.579 secs
March 24, 2014	12:11:01.303 AM	Sell	\$1,857.25	201	\$18,665,362.50	0.623 secs
March 26, 2014	11:55:53.892 PM	Buy	\$1,845.25	201	\$18,544,762.50	0.640 secs
December 7, 2015	03:15:57.994 AM	Sell	\$2,094.25	101	\$10,575,962.50	0.663 secs
December 7, 2015	03:16:03.202 AM	Sell	\$2,094.25	151	\$15,811,587.50	0.675 secs
December 22, 2015	03:45:43.179 AM	Buy	\$2,008.00	152	\$15,250,800.00	0.880 secs
December 22, 2015	06:45:46.640 AM	Buy	\$2,008.25	152	\$15,262,700.00	0.705 secs
January 15, 2016	06:08:59.223 AM	Sell	\$1,885.00	152	\$14,326,000.00	0.727 secs
January 26, 2016	01:08:59.811 AM	Sell	\$1,862.75	152	\$14,156,900.00	0.688 secs

Approx. Date	Approx. Time (Central Time)	Side	Approx. Price	Approx. Number of Contracts in Spoof Order	Approx. Total Value of Spoof Order	Approx. Period of Time Spoof Order Was Active
February 10, 2016	05:29:54.776 AM	Sell	\$1,867.75	151	\$14,101,512.50	0.720 secs
March 2, 2016	04:30:49.701 AM	Buy	\$1,973.25	162	\$15,983,325.00	0.671 secs
March 7, 2016	03:45:10.792 AM	Sell	\$2,026.75	152	\$15,403,300.00	0.778 secs

The CME Investigation

In approximately March 2016, the CME began an investigation into ZHAO's trading activity in connection with the E-mini S&P 500 futures contracts. As part of that investigation, ZHAO submitted to an interview with the CME, and provided written responses, to explain his trading activity. ZHAO knew that he was obligated to be truthful in his interview with, and written response to, the CME, and knew the CME was acting in furtherance of its official duties under Title 7, United States Code, Chapter 1 during its investigation. ZHAO responded to the CME (i) as an employee of Trading Firm A, (ii) acting with the intent, at least in part, to benefit Trading Firm A, and (iii) acting within the scope of his authority and employment at Trading Firm A.

As part of its investigation, the CME identified three specific examples of ZHAO's trading activity that occurred on December 7 and 22, 2015, and March 7, 2016. In a written response submitted to the CME, ZHAO stated that all of the orders identified in the three examples were part of either a "scalping" or spread trading strategy and were placed with the intention to execute. In truth and in fact, however, when providing this response to the CME, ZHAO well knew that, for certain large orders identified in each example, he had placed these large orders with the intent, at the time they were placed, to cancel them before execution. That is, these large orders were Spoof Orders. ZHAO's statement that he placed these large orders with the intention that they be filled was false and misleading,

and it was material to the CME's investigation into ZHAO's trading activity. ZHAO made this false statement knowingly and willfully, in order to falsify, conceal, and cover up his spoofing conduct. ZHAO retained counsel to represent him in connection with the CME investigation, and ZHAO knowingly used his counsel as a conduit to convey this same false and misleading information to the CME.

8. The foregoing Facts are set forth solely to assist the Court in determining whether a factual basis exists for the defendant's plea of guilty, and are not intended to be a complete or comprehensive statement of all the facts within the defendant's personal knowledge regarding the charged crime and related conduct.

Maximum Statutory Penalties

9. The defendant understands that the charge to which he is pleading guilty carries the following statutory penalty:

a. A maximum sentence of ten years' imprisonment. The statutory maximum period of imprisonment for Count One (spoofing) is ten years. The defendant further understands that the Court also may impose a term of supervised release of not more than three years for this offense.

b. A criminal fine of \$1,000,000, or twice the gross gain or gross loss resulting from the offense, whichever is greater.

c. The defendant further understands that, pursuant to Title 18, United States Code, Section 3663A, the Court must order restitution for persons directly and proximately harmed as a result of the defendant's violation of Count One (spoofing), in an amount determined by the Court.

d. In accord with Title 18, United States Code, Section 3013, the defendant must pay a mandatory special assessment of \$100 (\$100 on each count to which he has pleaded guilty), in addition to any other penalty, forfeiture, or restitution imposed.

Sentencing Guidelines Calculations

10. The defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

11. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 1, 2018 Guidelines Manual.

b. **Offense Level Calculations.**

i. For Count One, the base offense level is 6, pursuant to Guideline § 2B1.1(a)(2).

ii. The parties agree that, pursuant to Guideline § 2B1.1(b)(1), a loss assessment is appropriate.

iii. Pursuant to Guideline § 2B1.1(b)(2)(A)(i), defendant's offense level is increased by 2 levels because the offense involved 10 or more victims.

iv. Pursuant to Guideline §§ 2B1.1(b)(10), defendant's offense level is increased by 2 levels because the offense involved sophisticated means.

v. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the Fraud Section and the Probation Office with all requested financial information relevant to his ability to satisfy any fine, forfeiture, or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

vi. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining the defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and the defendant's criminal history category is I.

d. **Joint Sentencing Recommendation.** The government and the defendant agree to jointly recommend that the defendant be sentenced to a period of one year and one day (12 months plus one day) imprisonment, with credit for time already served in United States and Australian facilities.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Plea Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this Plea Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Plea Agreement will not be affected by

such corrections, and the defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

Cooperation

12. The defendant agrees he will fully and truthfully cooperate in any matter in which he is called upon to cooperate by a representative of the Fraud Section. This cooperation shall include making himself physically available in Washington, D.C. or the Northern District of Illinois for, and providing complete and truthful information during, any investigation and pre-trial preparation and complete and truthful testimony in any criminal, civil, or administrative proceeding. The defendant agrees to the postponement of his sentencing until after the conclusion of his cooperation. The defendant further agrees to make himself available by telephone within seven (7) calendar days of any request by the Fraud Section.

Agreements Relating to Sentencing

13. The parties agree that, on January 29, 2018, the defendant was arrested by the Australian Federal Police and remanded into custody pending extradition to the United States. Pursuant to 18 U.S.C. § 3585(b), the defendant shall be given credit for the time that the defendant has spent in custody toward the service of any term of imprisonment imposed for the offense that the defendant is pleading guilty to in Count One of the Information. The parties agree that upon entry of a guilty plea in open court, the parties will jointly move the Court to order the Bureau of Prisons prior to sentencing to calculate the duration of time that the defendant has already served in custody.

14. At the time of sentencing, the government shall make known to the sentencing judge the extent of the defendant's cooperation. If the government determines, in its sole discretion, that the defendant has provided full and truthful cooperation as required by this Plea Agreement, and has rendered substantial assistance, then the government shall move the Court, pursuant to Guideline

§ 5K1.1, to depart downward from the low end of the applicable guideline range. The defendant understands that the decision to depart from the applicable guideline range rests solely with the Court.

15. If the government does not move the Court, pursuant to Guideline § 5K1.1, to depart from the applicable Guideline range, as set forth above, the preceding paragraph of this Plea Agreement will be inoperative, both parties shall be bound to request a sentence as set forth in Paragraph 13, and the Court shall impose a sentence taking into consideration the factors set forth in 18 U.S.C. § 3553(a) as well as the Sentencing Guidelines without any downward departure for cooperation pursuant to § 5K1.1. The defendant may not withdraw his plea of guilty because the government has failed to make a motion pursuant to Guideline § 5K1.1.

16. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Plea Agreement and may impose a sentence up to the maximum penalties as set forth above. The defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, the defendant will have no right to withdraw his guilty plea.

17. The defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

18. If the Court should order restitution, the defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses as determined by the Court. Pursuant to 18 U.S.C. § 3663A(c)(2), the defendant agrees that an offense listed in 18 U.S.C. § 3663A(c)(1) gave rise to this Plea Agreement and as such, victims of the conduct described in the Information, Factual Basis, or any related or similar conduct shall be entitled to restitution. The parties further acknowledge, however, that pursuant to 18 U.S.C. § 3663A(c)(3), and based on information currently available to the government: (i) determining complex issues of fact relating to the amount of the victims' losses would

complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim may be outweighed by the burden on the sentencing process; and (ii) the number of identifiable victims may be so large as to make restitution impracticable. To that end, the defendant agrees, pursuant to 18 U.S.C. § 3664(d)(5), that the court may defer the imposition of restitution, if any, until after the sentencing; however, defendant specifically waives the 90-day provision found at 18 U.S.C. § 3664(d)(5). The defendant also consents to the government filing a motion with the Court seeking authorization to use alternative victim notification procedures pursuant to 18 U.S.C. § 3771(d)(2). Defendant further acknowledges that, pursuant to 18 U.S.C. § 3664(k), he is required to notify the Court and the Fraud Section of any material change in economic circumstances that might affect his ability to pay restitution.

19. The defendant agrees to disgorge proceeds he earned from the criminal conduct which is the subject of this Plea Agreement. The government has calculated such proceeds to be approximately \$21,000, and the defendant reserves the right to present evidence that reduces the appropriate amount of disgorgement. Any such evidence must be provided to the government no later than forty-five (45) days prior to sentencing. The defendant shall not be required to disgorge the proceeds of identical conduct for which he is ordered to disgorge proceeds in a parallel civil or regulatory proceeding before the U.S. Commodity Futures Trading Commission.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

20. This Plea Agreement is entirely voluntary and represents the entire agreement between the Fraud Section and the defendant regarding defendant's criminal liability in case 18 CR 24.

21. Except as set forth in this Plea Agreement, the Fraud Section agrees that it will not initiate further criminal charges against the defendant based on conduct set forth in the criminal information and this agreement.

22. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Plea Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against the defendant or any other person or entity. The obligations of this Plea Agreement are limited to the Fraud Section and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Plea Agreement.

Waiver of Rights

23. The defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** The defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without jury, the defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. The defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that the defendant is presumed innocent, that the government has the burden of proving the defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established the defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, the defendant could present witnesses and other evidence on his own behalf. If the witnesses for the defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, the defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If the defendant desired to do so, he could testify on his own behalf.

24. **Waiver of appellate and collateral rights.** The defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. The defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed.

Acknowledging this, the defendant knowingly waives the right to appeal his conviction, pre-trial rulings by the Court, and his right to challenge his sentence, and the manner in which the sentence was determined, including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution and forfeiture, and (in any case in which the term of imprisonment and fine are within the maximums provided by statute) his attorney's alleged failure or refusal to file a notice of appeal, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255, in exchange for the concessions made by the government in this Agreement. This includes a waiver of right to challenge the constitutionality, whether facially or as applied, of statutes to which the defendant is pleading guilty. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this agreement or to its negotiation, nor does it prohibit the defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to the defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

25. The defendant hereby waives any and all objections, motions, and defenses based upon the Statute of Limitations or venue in the Northern District of Illinois.

26. The defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. The defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

27. The defendant understands that the Fraud Section, in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing, shall fully apprise the District Court and

the Probation Office of the nature, scope, and extent of the defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing, including the nature and extent of the defendant's cooperation.

28. The defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the Fraud Section, regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. The defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

29. For the purpose of monitoring the defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which the defendant is sentenced, the defendant further consents to the disclosure of his tax returns (together with extensions, correspondence, and other tax information) and related tax filings and materials to the Probation Office and the Fraud Section filed subsequent to the defendant's sentencing, to and including the final year of any period of supervised release or probation to which the defendant is sentenced.

Other Terms

30. The defendant agrees to cooperate with the Fraud Section in collecting any unpaid fine and restitution for which the defendant is liable, including, upon request, providing financial statements under oath or affirmation and supporting records and submitting to interviews by the United States and the U.S. Probation Office regarding the defendant's capacity to satisfy any fines or restitution.

31. The defendant understands that any person convicted of a felony under Title 7, United States Code, Section 13 shall be suspended from registration under that chapter and shall be denied registration or re-registration for five years or such longer period as the CFTC may determine, and barred from using, or participating in any manner in, any market regulated by the CFTC for five years or such longer period as the CFTC shall determine, on such terms and conditions as the CFTC may prescribe, unless the CFTC determines otherwise. The defendant understands that nothing in this agreement alters the CFTC's statutory authority or discretion to effect any such suspension, denial, or bar against him, or otherwise binds the CFTC in any way. The defendant nevertheless affirms that defendant wants to plead guilty regardless of any collateral consequences that the defendant's plea may entail under Title 7, United States Code, Section 13, or other applicable laws relating to the CFTC's authority over the defendant.

32. The defendant understands that, when convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future. Under federal law, a broad range of crimes are removable offenses, including the offense to which the defendant is pleading guilty. Because removal and other immigration consequences are the subjects of a separate proceeding, the defendant understands that no one, including the defendant's attorney or the Court, can predict to a certainty the effect of the defendant's conviction on the defendant's immigration status. The defendant nevertheless affirms that defendant wants to plead guilty regardless of any immigration consequences that the defendant's plea may entail, even if the consequence is the defendant's automatic removal from the United States. The parties agree that the United States will not oppose a request by the defendant to obtain his passport, leave the United States, and return to Australia, provided that, until the defendant is sentenced, any travel outside the United

States and Australia shall require the consent of the government. The United States also will not oppose a request by the defendant that he be permitted to serve in Australia any period of probation or supervised release that the Court imposes as part of the sentence in this case.

Conclusion

33. The defendant understands that this Plea Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

34. The defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Plea Agreement. The defendant further understands that in the event he violates this Plea Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Plea Agreement, or may move to resentence the defendant or require defendant's specific performance of this Plea Agreement. The defendant understands and agrees that in the event that the Court permits the defendant to withdraw from this Plea Agreement, or the defendant breaches any of its terms and the government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Plea Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Plea Agreement and the commencement of such prosecutions. The defendant further understands that should he fail to appear at sentencing or any other proceeding in this matter without the consent of the government, the government will request that the Court sentence the defendant *in absentia* and deem the sentencing provisions in this Plea Agreement null and void.

35. The defendant further agrees and understands that, should the defendant violate any of the conditions of this Plea Agreement, or move to withdraw his plea of guilty:

a. the “Factual Basis” set forth in this Plea Agreement shall be admissible as substantive evidence in any criminal or civil proceeding brought against the defendant;

b. all (i) statements made by the defendant to the Fraud Section or other designated law enforcement agents, and (ii) testimony given by the defendant before a grand jury or other tribunal, whether prior to or subsequent to the signing of this Plea Agreement, and any leads from such statements or testimony, shall be admissible in evidence in any criminal or civil proceeding brought against the defendant; and

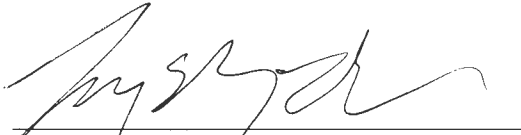
c. the defendant shall assert no claim under the United States Constitution, the United States Sentencing Guidelines, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule that the Factual Basis or any statements made by the defendant or any leads derived from such statements should be suppressed or are otherwise inadmissible. It is the intent of this Plea Agreement to waive all rights in the foregoing respects.

36. Should the judge refuse to accept the defendant’s plea of guilty, this Plea Agreement shall become null and void and neither party will be bound to it.

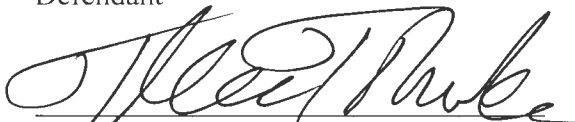
37. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement, to cause the defendant to plead guilty.

38. The defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. The defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Plea Agreement.

AGREED THIS DATE: Dec. 18, 2018



JIONGSHENG ("JIM") ZHAO
Defendant



THEODORE T. POULOS
Attorney for Defendant

SANDRA MOSER
Acting Chief, Fraud Section
U.S. Department of Justice

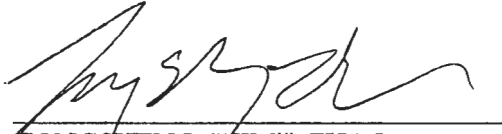
By: _____
MATTHEW F. SULLIVAN
Trial Attorney
JUSTIN D. WEITZ
Assistant Chief

Approved by:


BRIAN KIDD
Acting Chief
Securities & Financial Fraud Unit

38. The defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. The defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Plea Agreement.

AGREED THIS DATE: Dec. 18, 2018



JIONGSHENG ("JIM") ZHAO
Defendant



THEODORE T. POULOS
Attorney for Defendant

SANDRA MOSER
Acting Chief, Fraud Section
U.S. Department of Justice

By: Matthew F. Sullivan

MATTHEW F. SULLIVAN
Trial Attorney
JUSTIN D. WEITZ
Assistant Chief

Approved by:


BRIAN KIDD
Acting Chief
Securities & Financial Fraud Unit