

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

COMMODITY FUTURES TRADING)	
COMMISSION,)	
)	Case No. 4:22-cv-00365
Plaintiff,)	
)	
v.)	
)	
MATTHEW CLARK,)	
)	
Defendant.)	

**COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY PENALTIES,
RESTITUTION, DISGORGEMENT, AND OTHER EQUITABLE RELIEF**

Plaintiff Commodity Futures Trading Commission (“CFTC”), by and through its undersigned attorneys, alleges as follows:

I. SUMMARY

1. First, from at least August 6, 2015 to December 28, 2018, Matthew Clark (“Clark”) engaged in a fraudulent scheme to misappropriate material, nonpublic information from his employer, where Clark initiated a tipping chain that enabled others to trade on the basis of this material, nonpublic information, and to enter into fictitious trades at non-bona fide prices.

2. The fraudulent scheme generally operated in the following manner. Beginning no later than August 6, 2015, Clark, an energy trader working for an energy company (“Energy Company”) disclosed Energy Company’s block trade order information in natural gas futures contracts listed on the New York Mercantile Exchange (“NYMEX”), a Division of CME Group, Inc. (“CME”), including the prices and quantities at which Energy Company would trade. Clark disclosed this information to Mathew Webb (“Webb”), the President of, and also a broker with, Classic Energy LLC (“Classic”), with the intention that Webb would subsequently disclose it to

Peter Miller (“Miller”), an energy trader who was trading through Omerta Capital LLC (“Omerta”), a proprietary trading company Miller owned. Miller, through Omerta, then entered into fictitious, non-arm’s length trades with Energy Company—on the basis of Energy Company’s material, nonpublic information as disclosed by Clark to Webb, and then Webb to Miller—at advantageous prices that enabled Miller and Omerta to generate a profit. Miller then shared these profits with Webb and Clark.

3. In approximately April 2017, Clark was promoted to an executive position within Energy Company, and according to company policy was no longer permitted to place trades on behalf of Energy Company. At this point, Clark then directed another Energy Company trader under his supervision (“Company Trader B”) to disclose similar block trade order information to Classic and Webb (and then later an additional broker at Classic (“Broker A”)), which Webb and Broker A then disclosed to Miller. Miller then similarly traded through Omerta on the basis of this material, nonpublic information, and continued to share a portion of the profit from these trades with the various individuals involved in the fraudulent scheme.

4. Second, Clark also devised and engaged in a fraudulent scheme in which he extracted a portion of the brokerage commissions Energy Company paid to Classic as a kickback for sending Energy Company’s business to Classic and Webb. From 2009 through 2019, Clark and Webb had an arrangement whereby Webb would pay Clark a percentage of the brokerage commissions paid by Energy Company to Classic. In turn, Clark would direct Energy Company’s natural gas block trading business to Classic and instruct other Energy Company traders to do the same. Clark concealed his receipt of kickback payments in several ways. From 2009 through 2012, Clark demanded that Webb hire his fiancée and later wife as a “marketer” and pay her a percentage of the commissions Classic earned from trades brokered for Clark on

behalf of Energy Company. Beginning in 2012, Classic paid kickbacks to Clark through Green Mountain Energy, an entity first owned by Clark's wife, and later his half-sister, that was controlled and used by Clark to receive these payments. Later, in 2015, Clark asked Webb to hire his longtime friend, Broker A, to broker trades placed by Company Trader B. Broker A then paid Clark kickbacks out of his paycheck from Classic, which included a share of the commissions from trades Broker A brokered for Company Trader B and those Webb brokered for Clark.

5. To avoid detection and further perpetuate the fraudulent schemes described above, when interviewed by the CFTC about these and related activities Clark made false or misleading statements of material facts to the CFTC, and omitted material facts necessary to make statements of material fact not misleading in any material respect, which he knew or reasonably should have known were false or misleading, when he was not forthcoming about his knowledge of and participation in the schemes or the individuals and entities involved therein.

6. By this conduct and further conduct described herein, Clark has engaged, is engaging, or is about to engage in acts and practices that violate Sections 4b(a)(1)(A) and (C), 4c(a), 6(c)(1) and (2) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6b(a)(1)(A), (C), 6c(a), 9(1), (2), and Commission Regulation ("Regulation") 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2021).

7. Accordingly, the CFTC brings this action under Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin Clark's unlawful acts and practices and to compel Clark's compliance with the Act and Regulations. The CFTC also seeks civil monetary penalties, disgorgement of the profits Clark obtained through the fraudulent scheme, restitution, trading and registration prohibitions,

and any other such equitable and ancillary relief as the Court deems necessary or appropriate under the circumstances.

II. JURISDICTION AND VENUE

8. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (providing that 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).

9. Section 6c(a) of the Act, 7 U.S.C. § 13a-1 authorizes the CFTC to seek injunctive and other relief against any person whenever it shall appear to the CFTC that such 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.

10. Venue lies properly in this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(c), because Clark resides in this District, transacted business in this District, and certain transactions, acts, practices, and courses of business in violation of the Act and the Regulations occurred, are occurring, or about to occur in this District, among other places.

III. THE PARTIES

11. **Plaintiff Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act and the Regulations promulgated thereunder. One of its core responsibilities is to protect the public interest by ensuring the financial integrity of all transactions subject to the Act and Regulations and protecting market participants from fraudulent practices. Section 3(b) of the Act, 7 U.S.C.

§ 5(b). The CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street NW, Washington, D.C. 20581.

12. **Defendant Matthew Clark** is a resident of Houston, Texas. From August 16, 2015 until July 25, 2019, Clark was employed by Energy Company in its office in The Woodlands, Texas. Until April 2017, Clark actively traded on behalf of Energy Company while holding a number of supervisory trading positions at Energy Company. In April 2017, Clark was promoted to an executive position within Energy Company. Clark has never been registered with the CFTC.

IV. OTHER RELEVANT INDIVIDUALS AND ENTITIES

13. **Energy Company** is a business that engages in energy marketing and trading in North America. Energy Company employs traders who trade natural gas products for the benefit of Energy Company's business, including, formerly, Clark and Company Trader B. Energy Company frequently used Classic to broker block trades in natural gas futures contracts.

14. **Peter Miller** is an individual who resides primarily in San Juan, Puerto Rico. Miller trades natural gas futures contracts through Omerta. Miller is the President, Chairman, and an Authorized Member of Omerta. On December 10, 2021, the CFTC sued Miller in this court for violations of the Act and Regulations in connection with the scheme to misappropriate Energy Company's material nonpublic information described in this Complaint. Miller has never been registered with the CFTC in any capacity.

15. **Omerta Capital LLC** is a Puerto Rico limited liability company, with its principal place of business in Dorado, Puerto Rico. Omerta is a proprietary trading company that owns the futures trading accounts that Miller used to trade natural gas futures contracts and other products. Omerta has never been registered with the CFTC in any capacity.

16. **Company Trader B** is a resident of Spring, Texas. Company Trader B traded natural gas futures products on behalf of Energy Company. Prior to July 25, 2019, Company Trader B was supervised by Clark. Except for a three-month period from January 1, 2014 to March 31, 2014 not relevant to the allegations in this Complaint, Company Trader B has not otherwise been registered with the CFTC.

17. **Classic Energy LLC** was a registered introducing broker located in Houston, Texas. Among other services, Classic was a voice broker that brokered block trades for customers in energy futures contracts and other products listed on designated contract markets such as NYMEX. The CFTC issued two separate orders against Classic asserting violations of the Act and Regulations on September 30, 2019, and June 14, 2021. Classic withdrew its registration with the CFTC in 2019, and was permanently barred from registering with the CFTC on June 14, 2021.

18. **Mathew D. Webb** was the founder, President, sole member, and a registered associated person of Classic. Webb brokered block trades for Classic customers in natural gas futures contracts listed on NYMEX. Webb was also the sole member of MDW Capital, LLC (“MDW”), a limited liability company that owned the trading account through which Webb conducted proprietary trading. The CFTC issued orders against Webb asserting violations of the Act and Regulations involving Classic and MDW on September 30, 2019, and involving Classic on June 14, 2021. Webb’s registration with the CFTC was temporarily suspended in 2019, and then on June 14, 2021, Webb was permanently barred from registering with the CFTC.

V. FACTS

A. The Fundamentals of the Natural Gas Futures Market Used in the Fraudulent Scheme.

19. Natural gas is an energy commodity traded by buyers and sellers.

20. One way to trade natural gas is to buy or sell a futures contract. A futures contract is an agreement to buy or sell a commodity at a fixed quantity and price for delivery or cash settlement at a specific date and time in the future. Futures contracts are used to assume or shift price risk and may be satisfied by cash settlement, delivery, or offset. Futures contracts are commonly used to hedge risks or to speculate on the price of financial instruments of physical commodities.

21. Futures contracts are traded on exchanges—designated contract markets regulated by the CFTC—including NYMEX, a subsidiary of CME. NYMEX lists different products for trading, including natural gas futures contracts, and both determines and enforces rules and procedures for trading on its exchange.

22. A trader can place an order to either buy (a “bid”) or to sell (an “offer”) a certain quantity of a specific futures contract. An order is “filled” when a buyer’s bid price and a seller’s offer price match for a particular futures contract. A trader who purchases a futures contract establishes a “long” position, and a trader who sells a futures contract establishes a “short” position.

23. Offsetting trades are opposite transactions for an equal number of contracts of the same delivery month that liquidate a purchase or sale of a futures contract and close the long or short position (i.e., 100 “long” futures contracts are offset by 100 of the same “short” futures contracts). The net gain or loss on the trade is equal to the difference between the price of the

futures contracts when the position was opened and the price of the futures contracts when the position was closed, or offset.

24. Natural gas trades at different prices at different physical delivery points throughout the United States. “Henry Hub”—the delivery location near Louisiana’s Gulf Coast that connects several intrastate and interstate pipelines—is used as the standard pricing reference for many natural gas futures contracts. NYMEX lists multiple futures contracts that are priced based on the price of natural gas at the Henry Hub delivery point during specified time periods, known as delivery months.

25. One such contract is the Natural Gas (Henry Hub) Last-Day Financial Futures contract (“HH Contract”). The HH Contract is based on the price of natural gas at the Henry Hub delivery point. The HH Contract is financially-settled, meaning that at the expiration of the contract, a person with an open position receives or pays the difference between the price at which they opened the position and the final settlement price.

26. Traders can buy or sell the HH Contract either for a single delivery month or for a “calendar strip” of multiple consecutive delivery months.

27. With limited exceptions, futures contracts are required to be traded openly and competitively. All futures contracts listed and traded on NYMEX, including natural gas futures contracts, are traded through Globex, the electronic trading platform operated by CME to facilitate electronic trading on CME exchanges. Trading through the Globex platform is colloquially referred to as trading on the “screen” by market participants

28. One exception is block trades, which are permissible, privately-negotiated transactions that meet certain minimum contract number thresholds set by the exchanges. As reflected by the minimum contract size requirements, block trades are significantly larger in

number of contracts and are often used by institutional investors. While block trades are not negotiated on the open market, under exchange rules they are required to be executed at fair and reasonable prices, taking into account, among other factors, the circumstances and prices of the market. All block trades are also required to be reported to NYMEX. Once reported, NYMEX posts publicly the price and quantity at which the block trade was executed, among other data.

B. Clark Often Traded Natural Gas Futures Contracts Via Block Trades.

29. Clark was a natural gas trader who held a number of supervisory trading positions at Energy Company. In April 2017, Clark was promoted to an executive position within Energy Company and stopped actively trading. Clark served in that capacity until his employment was terminated on July 25, 2019.

30. Before being promoted, Clark traded natural gas futures contracts on behalf of Energy Company on NYMEX. Clark traded these natural gas futures contracts either on the screen through Globex, CME's electronic trading platform, or as block trades.

31. When trading natural gas futures contracts as block trades on behalf of Energy Company, Clark often used voice brokers to locate counterparties and facilitate execution of the block trades.

32. Classic was a voice brokerage firm that facilitated block trades between its customers in, among other things, natural gas futures contracts. Classic's brokers facilitated block trades by soliciting and receiving block trade orders from Classic's customers. Classic brokers would then locate potential counterparties for the block trades either from among Classic's other customers, or from the customers of another voice broker. Once Classic's brokers located a counterparty, and provided the counterparty's bid or offer for the block trade, the block trade was executed when the customer expressed its acceptance of the bid or offer.

Brokers then submitted the details of the executed block trade to the exchange clearinghouse for clearing. Brokers earn revenue on these trades by charging their customers a commission for facilitating, executing, and clearing the block trades.

C. Clark Participated in a Scheme To Misappropriate Energy Company's Material, Nonpublic Information and Receive a Share of the Profits Generated by Trading on the Basis of this Information.

33. In August 2015, while attending the wedding of Company Trader B, Clark discussed the fraudulent scheme with Miller and Webb. As part of this scheme, Clark would send to Webb material, nonpublic information regarding the block trade orders in the HH Contract that Energy Company intended to execute, in a manner that appeared similar to how Clark typically communicated with voice brokers. Webb, in turn, understood he was to share this block trade order information with Miller only.

34. As a trader and company executive, Clark knew and understood that Energy Company considered its block trade order information to be highly confidential. Clark further knew that the information he disclosed to Webb was nonpublic information belonging to Energy Company, and that Webb would further disclose the information to Miller for the purpose of arranging a fictitious block trade in furtherance of the scheme.

35. Miller then knowingly or recklessly traded on the basis of this material, nonpublic information of Energy Company as disclosed by Clark. By trading on the basis of Energy Company's information, Miller was able to select a price for the block trade in the HH Contract that enabled Omerta to generate trading profits on Miller's offsetting HH Contract trade. As part of the scheme, Miller shared these trading profits with both Clark and Webb.

1. Clark Had a Duty To Keep Confidential Energy Company's Block Trade Order Information.

36. Participants in the block trade market consider their block trade orders and any other confidential information they provide to voice brokers regarding their trading intentions to be material, nonpublic information. Through his employment with Energy Company, Clark developed and had access to Energy Company's information regarding what block trade orders it would place and the prices and quantities at which Energy Company was willing to execute a block trade. Energy Company considered this information to be material, nonpublic information. Under Energy Company's employee agreements, policies, and procedures, all information of a confidential, proprietary, or secret nature that is related in any way to the business of Energy Company was considered confidential, nonpublic information.

37. As an employee of Energy Company, Clark had a duty to keep this block trade order information confidential and disclose it to the voice brokers used by Energy Company for the purpose of locating potential block trade counterparties and executing block trades for the benefit of Energy Company.

38. Under the employment agreements, policies, and procedures that governed Clark's employment with Energy Company, Clark agreed and had a duty to keep confidential nonpublic information belonging to Energy Company and not to disclose it to unauthorized persons or use it for any purpose other than performing his duties as an employee of Energy Company. Energy Company's employee policies specifically required employees to use confidential business information solely for the benefit of Energy Company. Energy Company's employee policies further obligated all employees not to disclose such information for the purpose of making a personal profit.

2. Clark Breached His Duty to Energy Company by Disclosing Its Block Trade Order Information to Webb, Who in turn Disclosed This Information to Miller.

39. Clark typically traded the HH Contract either for a single delivery month, as a calendar strip of multiple delivery months, or as a calendar spread between two delivery months. Clark, Miller, and Webb agreed that Clark would signal to Webb that he wanted to trade in furtherance of the fraudulent scheme by giving Webb a block trade request for a single delivery month, as opposed to a calendar strip or calendar spread. When Clark disclosed to Webb a block trade order for the HH Contract for a single delivery month, Webb would disclose this block trade order information to Miller only, instead of soliciting bids and/or offers from among multiple Classic customers, as was his typical practice and Energy Company's expectation.

40. Clark knew and understood that when he disclosed a single-month HH Contract order to Webb that Webb would provide this information to Miller only. Clark further knew and understood that Miller would trade on the basis of this information in the manner described below. Clark disclosed this information knowing and understanding that he would share in the profits Omerta generated from trading on the basis of this information.

41. Similarly, Webb knew and understood that when Clark disclosed a single-month HH Contract order to him, Clark intended for Webb to share the order with Miller only. As a voice broker, Webb knew and understood that traders consider their block trade order information to be highly confidential. Webb further knew and understood that traders disclose this block trade order information to voice brokers for the limited purpose of locating potential counterparties to a block trade and expect voice brokers will not disclose the identity of the trader or firm placing the order. Webb further knew and understood that when Clark shared Energy Company's order information with him, Clark was not using Classic to locate

counterparties and execute block trades in the ordinary course of his business for Energy Company, but rather in furtherance of the scheme.

42. Webb disclosed this information to Miller knowing and understanding that Webb would also share in the profits Omerta generated from trading on the basis of this information. Webb disclosed this information to Miller also knowing and understanding that he and Classic would benefit from the increased brokerage activity and commission revenue generated by Clark's and Miller's trading in furtherance of the scheme.

43. In March of 2017, Clark received a promotion within Energy Company and no longer actively traded on its behalf. To continue the scheme, Clark directed Company Trader B, who had worked as a trader underneath Clark, to disclose Energy Company's block trade order information to Webb and Broker A, another Classic broker, in the same manner as Clark had been doing. Accordingly, Clark directed Company Trader B to disclose this information with the understanding that Webb and Broker A would further disclose this information to Miller so that Miller could trade on the basis of this information. Clark knew and understood that he would continue to receive from Miller a share of the profits Omerta generated by trading on the basis of this information disclosed by Company Trader B.

44. Similarly, Webb and Broker A knew and understood that they were to disclose the block trade order information they received from Company Trader B to Miller so that Miller could continue to trade in furtherance of the scheme. Webb and Broker A disclosed this information knowing and understanding that they and Classic would benefit from the increased brokerage activity and commission revenue generated by Company Trader B's and Miller's trading in furtherance of the scheme.

3. Clark Profited from Miller's Trading on the Basis of Energy Company's Misappropriated Information.

45. Miller traded on the basis of Energy Company's HH Contract block trade order information in one of three patterns: (1) to close a position already open against another market participant with Energy Company's block trade, (2) to open a position with Energy Company's block trade and then close it against another market participant, or (3) to both open and close a position with Energy Company's block trades.

46. By trading on the basis of Energy Company's confidential block trade order information provided by Clark (or Company Trader B at the direction of Clark) to Webb or Broker A, and then to Miller, Miller was able to obtain a price for the HH Contract that he needed to make his trade profitable, regardless of whether that price was available in the market for the HH Contract.

47. In the first pattern, Miller opened a position in the HH Contract with other market participants and closed the HH Contract position against Energy Company using Energy Company's material, nonpublic information as disclosed by Clark or Company Trader B. In this pattern, at a time when Miller had an open HH Contract position, Clark or Company Trader B contacted Webb or Broker A via instant message and described the delivery month and quantity of the HH Contract Energy Company was willing to trade, understanding that Webb or Broker A would disclose this information only to Miller and not solicit prices from among Classic's brokerage customers. Webb or Broker A then contacted Miller, who gave a price for the HH Contract that would close his open HH Contract at a favorable price. Clark or Company Trader B typically accepted whatever price Webb or Broker A communicated on behalf of Miller. In most of the instances when Miller engaged in this pattern of trading and traded on the basis of

Energy Company's block trade order information, he generated a trading profit for Omerta, and Clark received a share of these proceeds.

48. Clark's and Miller's trading on February 23, 2017 illustrates the first pattern. On this day, Miller had an existing open position in the May 2017 HH Contract. Specifically, Miller was long (bought) 100 lots in the May 2017 HH Contract. On February 23, 2017, Miller closed this open position as follows:

- a. At 9:59:12 AM, Clark contacted Webb via IM and told Webb he needed to buy 100 lots of the May 2017 HH Contract.
- b. At 9:59:33 AM, Webb asked Miller to provide an offer for 100 lots of the May 2017 HH Contract.
- c. At 10:03:01 AM, Miller provided Webb with a price of 2.853 for the block trade.
- d. At 10:03:25 AM, Webb confirmed to Clark that Miller sold 100 lots of the May 2017 HH Contract via a block trade with Energy Company, closing his open 100-lot long position in the May 2017 HH Contract. Webb reported this trade as having been executed at 10:04:44 AM.
- e. By trading on the basis of Energy Company's block trade order information from Clark, then disclosed to Miller by Webb, Omerta earned trading profits amounting to \$3,370.

49. In the second pattern, Clark or Company Trader B disclosed Energy Company's block trade order information to Webb or Broker A, and then Miller opened positions in the HH Contract with block trades opposite Energy Company—at advantageous prices for Omerta—after Webb or Broker A disclosed to Miller the block trade order information they received from

Clark or Company Trader B in the manner described above. Miller then closed these positions against other market participants. By trading in this manner, Miller was able to trade on the basis of Energy Company's material, nonpublic information as disclosed by Clark or Company Trader B to open positions at better prices than were otherwise available in the market, and was later able to offset these positions at a profit.

50. Clark's and Miller's trading on January 27, 2017 illustrates the second pattern. Miller opened a position for 100 lots in the February 2017 HH Contract by selling the HH Contracts via a block trade to Clark. Almost immediately after opening this position, Miller bought 100 lots of the February 2017 HH Contract, all on Globex, offsetting this open position:

- a. At 8:13:35 AM, Clark contacted Webb via IM and told Webb he needed to buy 100 lots of the February 2017 HH Contract.
- b. At 8:14:36 AM, Webb asked Miller to provide an offer for 100 lots of the February 2017 HH Contract.
- c. At 8:14:48 AM, Miller provided Webb with a price of 3.282 for the block trade.
- d. At 8:15:39 AM, Webb confirmed to Clark that Miller sold 100 lots of the February 2017 HH Contract via a block trade with Company A, opening a 100-lot short position in the February 2017 HH Contract. Webb reported this trade as having been executed at 8:15:53 AM.
- e. Between 8:16:33 AM and 8:23:37 AM, Miller bought 100 lots of the February 2017 HH Contract on Globex. These Globex trades offset the open 100-lot HH Contract position Miller had just opened on the basis of the block trade order information disclosed by Clark to Webb.

- f. By trading on the basis of Energy Company's block trade order information from Clark, then disclosed to Miller by Webb, Omerta earned trading profits amounting to \$3,320.

51. In the third pattern, Clark or Company Trader B disclosed Energy Company's block trade order information to Webb or Broker A, and then Webb or Broker A disclosed the information to Miller. Miller then traded on the basis of this information, both opening and closing positions in the HH Contract with block trades opposite Energy Company—at advantageous prices for Omerta.

52. Clark's and Miller's trading on March 2, 2017 illustrates this third pattern. On this day, Miller sold the May 2017 HH Contract via a block trade with Clark. A little over an hour later, Miller bought the May 2017 HH Contract via a block trade with Clark, offsetting his open position.

- a. At 8:35:13 AM, Clark contacted Webb via IM and told Webb he needed to buy 125 lots of the May 2017 HH Contract.
- b. At 8:37:05 AM, Webb asked Miller to provide an offer for 125 lots of the May 2017 HH Contract.
- c. At 8:37:18 AM, Miller provided Webb with a price of 2.891 for the block trade.
- d. At 8:38:08 AM, Webb confirmed to Clark that Miller sold 125 lots of the May 2017 HH Contract via a block trade with Energy Company, opening a 125-lot short position in the February 2017 HH Contract. Webb reported this block trade as having been executed at 8:38:13 AM.

- e. A little over one hour later, at 9:42:03 AM, Clark contacted Webb via IM and told Webb he now needed to buy 125 lots of the May 2017 HH Contract.
- f. At 9:42:57 AM, Webb asked Miller to provide a bid for 125 lots of the May 2017 HH Contract.
- g. At 9:44:30 AM, Miller provided Webb with a price of 2.87 for the block trade.
- h. At 9:45:13 AM, Webb confirmed to Clark that Miller purchased 125 lots of the May 2017 HH Contract via a block trade with Energy Company, closing his 125-lot short position in the May 2017 HH Contract. Webb reported this block trade as having been executed at 9:45:25 AM.
- i. By trading on the basis of Energy Company's block trade order information from Clark, then disclosed to Miller by Webb, Omerta earned trading profits amounting to \$8,040.

53. From at least August 6, 2015 to December 28, 2018, Clark or Company Trader B disclosed block trade order information belonging to Energy Company for the purpose of allowing Miller to engage in 100 events where he opened and closed positions in the HH Contract on the basis of this block trade order information. These events involved a total of 103 block trades executed by Clark and 45 block trades executed by Company Trader B at the direction of Clark. Of these 100 events, 85 were profitable for Miller, resulting in a win rate of 85 percent. In total, Miller generated net trading profits of \$1,516,207 on the 100 events when he traded on the basis of Energy Company's material, nonpublic information. At different times

between August 2015 and December 2018, Clark received from Miller either one-half or one-third of the trading profits Miller generated from this fraudulent scheme.

54. Clark received his share of the profits in Omerta's trading account from these 100 events in the form of cash. Miller typically delivered these cash payments to either Clark or Webb in person in or around Houston, Texas.

4. Clark Executed Trades that Negated Market Risk and Caused the Reporting of Non-Bona Fide Prices.

55. By entering into and executing non-arm's length block trades in the manner described above, Clark provided Miller and Omerta with more advantageous prices and negated market risk in trades with Energy Company, effectively allowing Miller to select the price or prices he needed to make his trading strategy profitable.

56. As a result of entering into non-arm's length block trades on behalf of Energy Company that negated market risk, Clark caused prices to be recorded by NYMEX for those block trades that were not true and bona fide prices.

D. Clark Engaged in a Scheme To Extract Kickbacks Out of the Brokerage Commissions That Energy Company Paid to Classic.

57. Beginning in at least 2009 and continuing through August 2019, Clark engaged in a fraudulent scheme to extract as kickbacks a portion of the brokerage commissions that Energy Company paid to Classic for block trades brokered by Webb (and later other brokers at Classic).

58. Knowing that he would receive a portion of the brokerage commissions that Energy Company paid to Classic, Clark—who was in a supervisory position as Energy Company's Head of Northeast Trading and later Energy Company's President—steered natural gas block trading business to Webb and other brokers at Classic, and instructed other Energy Company traders to do so as well.

59. This natural gas block trading business included those trades that were part of the fraudulent scheme to misappropriate Energy Company's material, nonpublic information, but also included trades executed by Energy Company in the ordinary course of business and unrelated to that fraudulent scheme.

60. Between 2009 and August 2019, Clark used a variety of methods to conceal his receipt of money from Classic.

61. At first, beginning in 2009, Clark received kickback payments through his then-fiancée (later, although no longer, his wife, but referred to hereinafter as "wife" for simplicity). At Clark's direction, Webb hired Clark's wife as an "Energy Marketer" at Classic. However, her employment with Classic was a sham. Clark's wife never came into Classic's offices, was never issued a computer or mobile device, and never performed any actual job responsibilities at Classic. Nevertheless, Clark's wife was paid by Webb and Classic a percentage of Classic's commissions for trades Clark and Energy Company traders at his direction executed using Classic. In 2012, after they married, and Clark's wife took Clark's last name, Clark ended his wife's sham employment with Classic. Classic paid Clark's wife approximately \$302,030 in this manner between 2009 and 2012. Clark controlled the money his wife received from Classic.

62. Beginning sometime in 2011, Clark set up a bank account in the name of Green Mountain Energy ("GME"), a d/b/a originally in the name of his wife. Clark set up GME to further conceal the kickback payments from Webb and Classic. Beginning in 2011, Classic made some of the kickback payments directly to GME. Clark controlled all of the money in the GME bank account. Clark had an ATM card for the GME bank account that he used to withdraw cash and make purchases. In addition, Clark's wife pre-signed checks for the GME bank account and gave them to Clark for his use.

63. Sometime after Clark and his wife married in 2012, and his wife's sham employment with Classic ended, Clark transferred the GME account to the name of his stepsister. After the GME account was transferred to Clark's stepsister, Classic continued making kickback payments to the GME account. As with the payments to Clark's wife, these kickback payments were based on a share of the brokerage commissions Energy Company paid to Classic by Energy Company. Clark continued to have control over the money in the GME account. Clark continued to use an ATM card for the GME account to withdraw funds. Clark's stepsister pre-signed checks for the GME account which she gave to Clark for Clark's use. In some instances, Clark gave his son pre-signed checks for the GME account for his son to use as he saw fit. Between 2011 and 2015, Classic paid approximately \$1,320,934 to the GME account.

64. In 2015, as part of this fraudulent scheme, Clark asked Webb to hire Broker A, his longtime friend, as a Classic broker. At the time, Broker A had no experience as a voice broker. Webb made Broker A a Classic broker with the understanding that Broker A would broker block trades for Company Trader B and occasionally other traders at Energy Company. Like other Classic brokers, Broker A was paid a percentage of the brokerage commissions Classic earned from the trades he brokered. Broker A was also paid a percentage of the brokerage commissions Classic earned for trades Webb brokered for Clark. Broker A paid kickbacks to Clark out of the payments he received from Classic.

65. Around the time Broker A became a broker at Classic, Clark directed Company Trader B to direct a larger share of his block trade business to Classic, and Broker A in particular. As a result, Classic and Broker A began earning more commissions from Energy Company's trading. This increased the amount of kickbacks that Broker A paid to Clark.

66. Clark took other steps to increase the amount of kickbacks he was receiving from Broker A. For example, Clark directed Webb to increase the commission rate that Classic charged Energy Company. Clark also directed Company Trader B to increase the commission rate that Classic charged Energy Company for trades Broker A brokered for Company Trader B. As a result, Classic began earning more commission revenue from Energy Company's block trades, which increased the amount of money Webb and Broker A received for commissions, and therefore increased the amount of money funneled back to Clark as commission kickbacks.

67. Clark also directed Company Trader B to unwind a large trading position Energy Company had in natural gas futures. Clark specifically directed Company Trader B to execute the trades needed to unwind this position through Classic. Clark did so even though Company Trader B could have executed these trades himself on Globex, thus avoiding Energy Company having to pay brokerage commissions on these trades. Company Trader B entered into a give-up agreement with Classic and Broker A, giving Broker A authority to execute trades on Globex for Energy Company. Broker A earned commissions on these Globex-executed trades at rates similar to what he earned for brokering block trades. As a result, Clark received additional kickbacks from Broker A based on the commissions Broker A from executing these trades on Globex.

68. Despite having no prior experience as a voice broker, as a result of this fraudulent scheme Broker A became the highest paid broker at Classic between 2016 and 2018, accounting for 45 percent of the total amount of commissions paid to Classic brokers in 2016 and 54 percent in 2017. In total, Broker A received \$4,148,855.56 from Classic between 2015 and 2019. Broker A sent most of that money to Clark or to individuals or entities under Clark's control.

69. Broker A funneled Clark's share of the kickback payments to Clark in various ways, all designed to conceal the nature of the fraudulent scheme. At different points during the scheme, Broker A wrote checks or wired money: (1) to GME; (2) directly to Clark's stepsister; or (3) directly to Clark's wife. Beginning around November 2018 until approximately April or May 2019, Broker A and Clark's stepsister sent packages of cash to Clark's son. Clark's son then met Clark in person and hand-delivered these packages of cash to Clark. Broker A also transferred his commission income to an account in the name a d/b/a he established in furtherance of the scheme, then made payments from this d/b/a to a company set up by Clark's son. Clark's son then either used the money himself or gave the money to Clark.

70. No matter the form of payment or to whom it was sent, all accounts and entities were controlled by Clark.

71. Clark directed the payments to these various individuals and entities for the purpose of concealing from Energy Company and others his receipt of money from Classic, Webb, and Broker A.

72. Clark did not disclose to Energy Company that a portion of the commissions Energy Company paid to Classic for brokerage services were used to pay commission kickbacks to Clark. Energy Company's employee policies required all employees who received a gift, including senior management, to submit an application requesting advance approval of any gift over \$50. These policies also expressly prohibited the receipt of any gift over \$1,000. Clark never submitted an application for approval of any gift at Energy Company in connection with his receipt of any of the kickback payments described above as required by Energy Company's employee policies. Energy Company's employee policies also obligated employees to act in the best interest of Energy Company and to avoid conflicts of interest. Receipt of kickbacks paid out

of brokerage commissions in exchange for directing business to a particular broker violated Energy Company's prohibition on conflicts of interest.

E. Clark Made False and Misleading Statements and Omissions to the CFTC.

73. On February 28, 2019, the CFTC interviewed Clark during its investigation of Webb that led to the CFTC's September 30, 2019 administrative order against Webb and Classic, *In re Classic Energy LLC*, CFTC No. 19-50, 2019 WL 4915492, at *3 (Sept. 30, 2019) (consent order) ("*Classic P*"). In *Classic I*, the CFTC found, among other things, that between April 30, 2014 and September 3, 2015 Webb misappropriated the material, nonpublic information belonging to certain of Classic's customers by taking the other side of customer block trades through MDW—a proprietary trading account wholly owned by Webb—in violation of duties he owed to his customers. Webb executed block trades opposite Classic's customers at non-bona fide prices that would allow him to place an offsetting trade in MDW's trading account and realize a nearly risk-free profit. Energy Company was one of the customers from which the CFTC found Webb had misappropriated material, public information. Clark executed the trades in question on behalf of Energy Company.

74. Clark made several false and misleading statements to the CFTC's Division of Enforcement in the February 28, 2019 interview, including:

- a. that Clark was not aware that any voice broker he used, including Classic, was taking the other side of his block trade orders;
- b. that Clark did not expect any voice broker he used, including Classic, would be acting as a trader and taking the other side of his block trade orders;

- c. that Clark would not pay a brokerage commission to any broker who was acting as a trader and taking the other side of his block trade orders;
- d. that Webb never disclosed to Clark that Webb was trading in his own proprietary account at the same time he was brokering block trades for Clark; and
- e. that Clark did not have any relationship with Broker A beyond his awareness that Broker A was one of the brokers at Classic.

75. Clark's statements to the CFTC were false. Clark was not an innocent victim of Webb's misappropriation of Energy Company's material, nonpublic information, but rather a participant in the fraudulent scheme who shared in the profits of Webb's trading in the MDW account. Similar to the fraudulent scheme alleged in paragraphs 33 to 56 above, Clark intentionally gave Webb block trade orders on behalf of Energy Company knowing that Webb would take the other side of these orders in the MDW account and split any trading profits with Clark.

76. Clark continued to pay brokerage commissions for the trades that Webb took the other side of in the MDW account. Clark paid these commissions to help conceal his involvement and make the trades with MDW appear similar to those he executed in the ordinary course of his business on behalf of Energy Company. And as alleged above, Clark received a portion of these commissions as a kickback.

77. Clark did in fact have a longstanding relationship with Broker A. Clark was the sole reason that Broker A had a job with MDW, and later Classic. Clark asked Webb to hire Broker A first as a trader for the MDW account and later as a broker at Classic.

78. In addition to these express false statements, Clark omitted numerous material facts regarding his involvement in the scheme charged in *Classic I*, his relationship with Webb, and his relationship with Broker A that were necessary to make other statements he made during his interview not misleading in any material way. For example, during the interview, Clark stated that based on the Division of Enforcement's questions about *Classic* and Clark he now “thinks it was Webb who was trading” opposite Energy Company and that as a result he “was getting a little pissed off as he was sitting there.” However, Clark was not forthcoming with the CFTC and did not disclose that he knew about and shared in the profits from Webb’s trading in the MDW account based on Energy Company’s material, nonpublic information disclosed by Clark.

79. Clark’s false and misleading statements and misleading omissions during this February 28, 2019 interview had the effect of further concealing and allowing Clark and Webb to continue both the scheme to misappropriate information from Energy Company by disclosing it to Miller and the scheme to extract brokerage kickbacks from *Classic*, as alleged herein.

**VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND CFTC REGULATIONS**

COUNT ONE

**Violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1),
and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2021)**

(Misappropriation of Material Nonpublic Information)

80. Paragraphs 1 through 79 are realleged and incorporated herein by reference.

81. 7 U.S.C. § 9(1) provides, in relevant part:

It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered

entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the commission shall promulgate

82. 17 C.F.R § 180.1(a) (2021) provides, in relevant part:

It shall be unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:

- (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; . . . or
- (3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person

83. As a trader and later executive for Energy Company, Clark possessed material, nonpublic, and confidential information regarding Energy Company's plans and intentions to trade natural gas futures contracts, including the quantity of and at what price Energy Company would enter into trades in these contracts.

84. As a trader and later executive for Energy Company, Clark owed a duty to Energy Company and was obligated to keep confidential and not misappropriate for his own personal benefit information regarding Energy Company's trading strategy, plans, and intentions to trade natural gas futures contracts, including the HH Contract. The employment agreements, policies, and procedures governing Clark's employment with Energy Company also required Clark to keep confidential and not misappropriate for his own personal benefit information regarding Energy Company's trading strategy and plans and intentions to trade natural gas futures contracts, including the HH Contract.

85. Clark breached his duty to Energy Company by disclosing to Webb Energy Company's material, nonpublic information, with the intent that Webb would further disclose the

block trade order information to Miller, that Miller would trade on the basis of this information, and that Clark would share in Miller's profits from this trading.

86. Clark also breached his duty to Energy Company by directing Company Trader B to disclose to Webb or Broker A, Energy Company's material, nonpublic information, with the intent that either Webb or Broker A would further disclose the block trade order information to Miller, that Miller would trade on the basis of this information, and that Clark would share in Miller's profits from this trading.

87. Each fraudulent or deceptive act, including each instance in which Clark misappropriated material, nonpublic information belonging to Energy Company, is alleged as a separate and distinct violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1).

COUNT TWO

Violation of Section 4c(a)(1) and (2), 7 U.S.C. § 6c(a)(1), (2)

(Fictitious Sales)

88. Paragraphs 1 through 79 are realleged and incorporated herein by reference.

89. 7 U.S.C. § 6c(a)(1) provides:

It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2) involving the purchase or sale of any commodity for future delivery (or any option on such a transaction or option on a commodity) or swap, if the transaction is used or may be used to—

- (A) hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity;
- (B) determine the price basis of any such transaction in interstate commerce in the commodity; or
- (C) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

90. 7 U.S.C. § 6c(a)(2) provides:

A transaction referred to in paragraph (1) is a transaction that—

(A)(i) is, is of the character of, or is commonly known to the trade as, a ‘wash sale’ or ‘accommodation trade’; or

(ii) is a fictitious sale; or

(B) is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.

91. From at least August 6, 2015 to December 28, 2018, Clark violated 7 U.S.C. § 6c(a)(1) and (2) by entering into trades on behalf of Energy Company that were not executed on an arm’s-length basis, but were instead executed at prices that allowed Miller and Omerta to generate trading profits that were later shared with Clark.

92. By executing trades in this manner, Clark allowed Miller and Omerta to obtain advantageous prices and negate market risk.

93. Clark’s conduct therefore caused prices to be reported to or recorded by NYMEX that were not true and bona fide prices in violation of 7 U.S.C. § 6c(a)(2)(B).

94. Each fictitious sale, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6c(a)(1) and (2).

COUNT THREE

Violation of Sections 4b(a)(1)(A) and (C) and 6(c)(1) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C), 9(1), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2021)

(Participation in Brokerage Kickback Scheme)

95. Paragraphs 1 through 79 are realleged and incorporated herein by reference.

96. 7 U.S.C. § 6b(1) makes it unlawful:

For any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for

future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person . . . –

(A) to cheat or defraud or attempt to cheat or defraud the other person;

. . . [or]

(C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract . . .

97. 7 U.S.C. § 9(1) provides, in relevant part:

It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the commission shall promulgate

98. 17 C.F.R § 180.1(a) (2021) provides, in relevant part:

It shall be unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly:

(1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; . . . or

(3) Engage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person

99. Clark failed to disclose and concealed from his employer Energy Company that he was receiving a share of the brokerage commissions paid by Energy Company to Webb and Classic from the trades he executed and directed other traders at Energy Company (including Company Trader B) to execute using Classic as a broker.

100. Clark's use of brokers who paid him brokerage commission kickbacks was material because Clark was choosing brokers not based on Energy Company's best interests but instead based on which broker would maximize Clark's personal profit from the brokerage commission kickbacks.

101. Clark directed trades to Classic with knowledge and the specific purpose of receiving brokerage commission kickbacks. Clark attempted to conceal these kickback payments by structuring payment for his portion of the kickback payments through payments to family members and shell entities created expressly for the purpose of receiving the kickbacks.

102. Each fraudulent or deceptive act, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. §§ 6b(a)(1)(A), (C), 9(1), and 17 C.F.R. § 180.1(a)(1), (3).

COUNT FOUR

Violation of Section 6(c)(2) of the Act, 7 U.S.C. § 9(2)

(False Statements to CFTC)

103. Paragraphs 1 through 79 are realleged and incorporated herein by reference.

104. 7 U.S.C. § 9(2) makes it unlawful:

[F]or any person to make any false or misleading statement of a material fact to the [CFTC] . . . or to omit to state in any such statement any material fact that is necessary to make any statement of material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

105. Clark made false or misleading statements to the CFTC when he stated that he was not aware of any voice broker he used, including Classic, was taking the other side of block trade orders, where Clark knew that Webb was in fact taking the other side of Energy Company's block trade orders disclosed by Clark.

106. Clark made false or misleading statements to the CFTC when he stated that he did not expect that any voice broker he used would be acting also as a trader and taking the other side of his block trade orders.

107. Clark also made false or misleading statements to the CFTC when he stated that he would not pay brokerage commissions on block trades where the broker was also the counterparty to those block trades, where he knew that Webb was acting as both broker and trader, and in fact Clark personally profited by receiving a kickback for the brokerage commissions paid by Energy Company to Webb.

108. Clark made false or misleading statements to the CFTC when he stated that Webb never disclosed to Clark that he was also trading in a proprietary account; Clark both knew that Webb was trading in a proprietary account, and Clark shared in Webb's profits realized by using Energy Company's material, nonpublic information.

109. Clark made false or misleading statements to the CFTC when he stated that he knew Broker A only as a broker at Classic, when in fact Clark and Broker A were longtime friends and Clark secured Broker A's employment at both MDW and Classic.

110. Finally, Clark omitted material facts necessary to make his statements of material facts not misleading in any material respect when, in connection with his responses regarding his expectations that brokers he used would keep his block trade order information confidential, he failed to disclose and was not forthcoming about his relationship with Webb, and that Webb was not in fact keeping Energy Company's block trade order information confidential but was instead himself trading on Energy Company's material, nonpublic information, with Clark's knowledge and for the purpose of making trading profits that would then be shared with Clark.

111. All of these false or misleading statements and misleading omissions were material, because they went to the heart of the CFTC's investigation, specifically, whether Classic's customers were aware that Webb was taking the other side of their block trade orders in a proprietary account wholly owned by Webb.

112. Each false or misleading statement or omission of material fact to the CFTC, including but not limited to those specifically alleged herein, is alleged as a separate violation of 7 U.S.C. § 9(2).

VII. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

A. Find that Matthew Clark violated Sections 4b(a)(1)(A) and (C), 4c(a)(1) and (2), 6(c)(1), (2) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C), 6c(a)(1), (2), 9(1), (2); and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2021).

B. Enter an order of permanent injunction enjoining Clark, and his affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with him, who receive actual notice of such order by personal service or otherwise, from engaging in the conduct described above, in violation of 7 U.S.C. §§ 6b(a)(1)(A), (C), 6c(a)(1), (2), 9(1), (2) and 17 C.F.R. § 180.1(a)(1), (3) (2021);

C. Enter an order of permanent injunction restraining and enjoining Clark, and his affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with him, from directly or indirectly:

1. 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));

2. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2021)), for accounts held in Clark’s name or for accounts in which Clark has a direct or indirect interest;
3. Having any commodity interests traded on Clark’s behalf;
4. 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;
5. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling of any commodity interests;
6. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2021); and
7. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2021)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the CFTC except as provided for in 17 C.F.R. § 4.14(a)(9).

D. Enter an order requiring Clark, as well as any third-party transferee and/or successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commission, loans, fees, revenues, and trading profits derived, directly or indirectly, from acts or practices that constitute violations of the Act and Regulations as described herein, including pre-judgment and post-judgment interest;

E. Enter an order requiring Clark, as well as any successors thereof, to make full restitution to every person who has sustained losses proximately caused by the violations described herein, including pre-judgment and post-judgment interest.

F. Enter an order directing Clark to pay a civil monetary penalty assessed by the Court, in an amount not to exceed the penalty prescribed by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, tit. VII, § 701, 129 Stat. 584, 599-600, *see* Regulation 143.8, 17 C.F.R. § 143.8 (2021), for each violation of the Act and Regulations, described herein;

G. Enter an order requiring Clark to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

H. Enter an order providing such other and further relief as the Court deems proper.

VIII. DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

Dated: February 3, 2022

Respectfully submitted,

**COMMODITY FUTURES TRADING
COMMISSION**

/s/ Thomas L. Simek

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Commodity Futures Trading Commission

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Thomas L. Simek, J. Alison Auxter, Clemon D. Ashley
2600 Grand Blvd, Suite 210, Kansas City, MO 64108

DEFENDANTS

Matthew Clark

County of Residence of First Listed Defendant Harris (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Dan L. Cogdell
Jones Walker

811 Main Street, Suite 2900, Houston, TX 77002

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large grid table for Nature of Suit with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 7 U.S.C. §1-26

Brief description of cause: Misappropriation of material nonpublic information, fictitious sales, false statements to CFTC

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

February 3, 2022 /s/ Thomas L. Simek

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.