

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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9:38 am, Apr 27, 2022

_____)
In the Matter of:)

Scott Becker,)

Respondent.)

) CFTC Docket No. 22-14
)
)
)
)

ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about March 2020 to at least the end of March 2021 (“Relevant Period”), Scott Becker (“Becker” or “Respondent”) violated Section 6(c)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2021) of the Commission Regulations (“Regulations”) promulgated thereunder. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Becker admits the facts set forth below, acknowledges that his conduct violated the Act and Regulations, admits the Commission’s jurisdiction over him and the subject matter of these proceedings, consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, while employed at an investment management firm headquartered in New York (“Investment Manager 1”) that served as the investment manager of

private investment fund (“Investment Fund 1”), Becker and others at Investment Manager 1 engaged in a fraudulent scheme whereby he intentionally and/or recklessly made false or misleading statements of material facts and/or omitted to state material facts necessary to make the statements made not untrue or misleading to Investment Fund 1’s swap counterparties in order to secure additional capacity for Investment Fund 1 to enlarge its swap trading positions; to obtain or maintain favorable margin rates; and, during the week of March 22, 2021, to attempt to satisfy margin calls. The false or misleading information Becker provided included information about the size, composition, and liquidity of positions in Investment Fund 1’s entire portfolio across financial institutions, as well as information provided in connection with attempts to satisfy Investment Fund 1’s margin calls. The false or misleading information provided by Becker concerned facts that were important for Investment Fund 1’s swap counterparties to know in making credit and risk management decisions about Investment Fund 1’s swap portfolios at those respective counterparties, including decisions regarding margin and position size. By virtue of this conduct, Becker violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2021).

In accepting the Offer, the Commission recognizes Becker’s entry into a formal cooperation agreement (“Cooperation Agreement”) with the Division of Enforcement (“Division”), which sets forth the terms of his agreement to cooperate with the Commission and the Division in connection with any investigation, litigation, or proceeding to which the Commission is a party relating to the subject matter of this Order and/or as described in the Cooperation Agreement (the “Proceedings”).

B. RESPONDENT

Scott Becker is an individual residing in Goshen, New York. During the Relevant Period, Becker was the Director of Risk Management of Investment Manager 1. Becker has never been registered with the Commission in any Capacity.

C. FACTS

1. Background

During the Relevant Period, Becker was the Director of Risk Management at Investment Manager 1, a limited partnership formed in Delaware pursuant to Delaware law and headquartered in New York that served as the investment manager of Investment Fund 1. Investment Fund 1 was a limited partnership formed in Delaware pursuant to Delaware law and headquartered in New York that was a private investment vehicle. Since around 2018, in his role at Investment Manager 1, Becker had responsibility for communicating with the credit teams and other representatives of financial institutions that were swap counterparties to Investment Fund 1 (“Swap Counterparties”).

During the Relevant Period, Investment Manager 1, as investment manager for Investment Fund 1, caused Investment Fund 1 to enter into numerous swap transactions with

various Swap Counterparties, including several Swap Counterparties provisionally registered with the Commission as swap dealers. Investment Fund 1 sought exposure to equities, among other ways, by entering into long total return swaps (“TRS”)¹ based on single name securities. In order to hedge the risk imposed by these long positions, Investment Fund 1 also entered into certain short TRS positions which were based on: (i) a custom index of more than nine component securities (“custom basket swaps”); or (ii) an exchange traded fund that provided exposure to an index of hundreds of component securities (“ETF swaps,” and together with the custom basket swaps, “broad-based security index TRS”).²

Investment Fund 1’s swap transactions were generally subject to credit and risk limitations imposed by Investment Fund 1’s Swap Counterparties. For example, certain of Investment Fund 1’s Swap Counterparties permitted Investment Fund 1 to transact on a leveraged basis, provided it met certain margin requirements. In addition to margin requirements, certain of Investment Fund 1’s Swap Counterparties set other formal or informal credit and risk-related limitations on Investment Fund 1’s ability to transact swaps. Such limitations included setting a cap on the total notional value of Investment Fund 1’s portfolio with those respective Swap Counterparties; requiring that Investment Fund 1 maintain a certain ratio of long to short positions in its portfolio at that Swap Counterparty (which Investment Fund 1 met on the short side primarily by maintaining short broad-based security index TRS positions); and/or requiring that Investment Fund 1 enter into highly liquid diversified swap positions.

Starting around March 2020, Investment Fund 1 began to increase its exposure in certain long single name TRS positions, causing its highly leveraged portfolio at particular Swap Counterparties, as well as its overall portfolio across Swap Counterparties, to become more concentrated. Through the rest of 2020 and into 2021, Representatives of Investment Fund 1 periodically communicated with representatives of its Swap Counterparties to provide information about Investment Fund 1 and to seek additional capacity to increase the size of its long single name TRS positions. Although Investment Fund 1’s portfolio became more concentrated in long single name TRS positions, its portfolio at its Swap Counterparties also included short broad-based security index TRS positions, which were needed to satisfy counterparty credit and risk management requirements. In several instances, in order to increase the size of its concentrated long single name TRS positions while obtaining or maintaining favorable margin rates, Investment Fund 1 also had to increase the size of its short broad-based security index TRS positions.

¹ A total return swap is an agreement between two counterparties where one party, the seller of the credit risk, agrees to pay the other party the difference in value of a specified asset, index or derivative of an asset or an index, multiplied by an agreed-upon notional value should that value increase between specified periods of time. In exchange, the other party, the buyer of the credit risk, agrees to pay the difference in value of the specified asset multiplied by the notional value should that value decrease between the same specified periods of time. <https://www.cftc.gov/MarketReports/SwapsReports/DataDictionary/index.htm>.

² The broad-based security index TRS had an index of more than nine or more component securities and did not meet any of the other criteria for a narrow-based security index set forth in Section 1a(35)(A) of the Act, 7 U.S.C. § 1a(35)(A).

During the beginning of the week of March 22, 2021, certain of Investment Fund 1's concentrated long single name TRS positions dropped in value dramatically. Thereafter, certain of Investment Fund 1's Swap Counterparties issued substantial margin calls on its swap portfolio, and by March 25, 2021, Investment Fund 1 was unable to meet all of its margin calls due that day.

2. Becker's Participation in a Fraudulent Scheme

During the Relevant Period, Becker, while acting in his role at Investment Manager 1, participated in a fraudulent scheme where he intentionally and/or recklessly provided false or misleading information and/or omitted to state material facts necessary to make that information not untrue or misleading. Among other things, Becker provided false or misleading information and/or omitted to state material facts about the size, composition, and liquidity of positions in Investment Fund 1's entire portfolio across Swap Counterparties in order to secure additional capacity for Investment Fund 1 to enlarge its long single name TRS positions; to obtain or maintain favorable margin rates; and, during the week of March 22, 2021, to attempt to satisfy margin calls. The false or misleading information provided by Becker concerned facts or omitted facts that were important for Investment Fund 1's Swap Counterparties to know in making credit and risk management decisions about Investment Fund 1's swap portfolios at those respective Swap Counterparties.

a. Becker's False or Misleading Statements Concerning Investment Fund 1's Portfolio

During the Relevant Period, Becker engaged in discussions with representatives of Investment Fund 1's Swap Counterparties who were gathering information about Investment Fund 1 in order to make credit and risk management decisions about its portfolio at their respective institutions, which included both long single name TRS positions and short broad-based security index TRS positions. During these discussions, Becker was typically asked questions about Investment Fund 1's largest positions, gross exposure, unencumbered cash, and liquidity, among other things. In several instances, Becker intentionally and/or recklessly provided answers that were false or misleading.

For example, when asked about Investment Fund 1's largest positions across its entire portfolio (including at other Swap Counterparties), Becker intentionally misrepresented to its Swap Counterparties that Investment Fund 1's largest position was approximately 35% of its net asset value ("NAV"), despite knowing that this 35% figure was not true. For example, in late 2020 or early 2021, Becker had a telephone call with a representative of Swap Counterparty 1 and despite knowing Investment Fund 1's largest long single name TRS position had grown to significantly larger than 35% of Investment Fund 1's NAV, he falsely represented that it was only 35% of Investment Fund 1's NAV. Becker intentionally made similar misrepresentations about the size of Investment Fund 1's largest long TRS single name position to representatives of Swap Counterparty 2 on a recorded telephone call on March 8, 2021 and to representatives of other Swap Counterparties in late 2020 or early 2021.

As another example, Becker also intentionally made misrepresentations concerning the composition of Investment Fund 1's portfolio across its Swap Counterparties. For example, on

March 8, 2021, in a recorded telephone call with representatives of Swap Counterparty 2, Becker intentionally falsely represented that Investment Fund 1's top ten largest positions at Swap Counterparty 2 were materially different than the top ten positions in Investment Fund 1's overall portfolio in order to conceal the true size of its largest long TRS single name positions.³ Also, during the March 8, telephone call, Becker falsely represented that Investment Fund 1's position in a particular equity, Company 1, was "much larger" at Swap Counterparty 2 than it was at any other Swap Counterparty.

Becker also intentionally and/or recklessly misrepresented to Swap Counterparties that Investment Fund 1's portfolio across its swap counterparties was more liquid than it was. For example, on March 8, 2021, on a recorded telephone call with Swap Counterparty 2, Becker intentionally or recklessly represented that Investment Fund 1 could liquidate almost its entire portfolio in about two weeks without significantly impacting the market price of the securities in the portfolio. After Swap Counterparty 2 asked for additional information on Investment Fund 1's liquidity, in a recorded telephone call on March 10, 2021, Becker represented that Investment Fund 1 could liquidate: (i) about half of its total portfolio in ten days; (ii) seventy-five per cent of its total portfolio within twenty days; and (iii) its entire portfolio in about a month. Becker further stated that this was based on liquidation at a rate of 10-15% of average daily trading volume, which was meant to convey liquidation at a rate that would not significantly impact the market price of the securities in the portfolio, which included, in large part, the long single name TRS positions, that were to be sold. At the time Becker made these representations to Swap Counterparty 2, Becker knew or was reckless in not knowing, based on the size and composition of Investment Fund 1's portfolio compared to relevant average daily trading volumes, that his statement that the entire portfolio could be liquidated in the stated time-frame was false or misleading. Becker knew or was reckless in not knowing that Investment Fund 1's portfolio could not be unwound at the stated rate and in the stated time period without significantly impacting the market price, based on market conditions and the positions to be liquidated. Becker intentionally and/or recklessly made similar misrepresentations about the liquidity of Investment Fund 1's portfolio to representatives of other Swap Counterparties in late 2020 or early 2021.

Becker intentionally and/or recklessly made false statements about Investment Fund 1 in an effort to maintain and/or purchase additional long single name TRS positions and to obtain or maintain favorable margin rates. Becker understood that if he had told the truth about Investment Fund 1's portfolio, its Swap Counterparties might take measures such as increasing Investment Fund 1's margin requirements or limiting, restricting, or reducing Investment Fund 1's trade capacity. By Becker making false statements to Investment Fund 1's Swap Counterparties, Investment Fund 1 was able to maintain and/or enlarge its long single name TRS positions, maintain existing trade capacity, secure additional capacity to enlarge its TRS positions, and obtain or maintain favorable margin rates. Becker also understood that Investment Fund 1 needed to maintain and/or increase its short exposure in order to maintain favorable margin rates and/or enlarge its long single name TRS positions. As a practical matter, Investment Fund 1 typically increased its short exposure through broad-based security index

³ In a March 24, 2021 recorded telephone call with representatives of Swap Counterparty 2, Becker again falsely indicated that Investment Fund 1's largest positions at Swap Counterparty 2 were different than its positions at other financial institutions.

TRS positions, as those positions had been approved and encouraged by several Swap Counterparties as a risk-reducing measure.

b. Becker’s False or Misleading Statements in Connection with Attempting to Meet Margin Calls During the week of March 22, 2021.

During the week beginning March 22, 2021, Becker intentionally and/or recklessly continued to make false or misleading statements to representatives of Investment Fund 1’s Swap Counterparties in connection with attempts to meet Investment Fund 1’s margin calls.

For example, on March 24, 2021, Investment Fund 1 faced substantial margin calls due by the close of business that day, and Investment Fund 1 needed to request the return of excess capital in its accounts at certain Swap Counterparties in order to meet margin calls from other Swap Counterparties. After representatives of Investment Manager 1 requested that Swap Counterparty 6 return excess margin to Investment Fund 1, Becker intentionally falsely represented to Swap Counterparty 6 that Investment Fund 1’s cash position was \$9 billion when, in fact, the true amount of available cash was significantly less in order to conceal from Counterparty 6 that Investment Fund 1 needed these excess funds to immediately meet its margin calls. Becker also intentionally provided false assurances that Investment Fund 1 was not in a distress situation. Becker made these false representations in order to avoid Swap Counterparty 6 from withholding or delaying the release of its excess funds. After the call, Swap Counterparty 6 returned about \$250 million in excess margin to Investment Fund 1 that day.

Becker intentionally provided this false or misleading information in order to secure the immediate release of Investment Fund 1’s excess margin. Becker understood that if he had told the truth, Investment Fund 1’s counterparties may have withheld or delayed the return of excess margin until the Swap Counterparties gained a better understanding of Investment Fund 1’s financial solvency and ability to meet upcoming margin calls. By Becker providing false information to Investment Fund 1’s counterparties, Investment Fund 1 was able to secure the release of its excess margin, to the detriment of those Swap Counterparties.

III. LEGAL DISCUSSION

A. Use of a Manipulative or Deceptive Device in Violation of Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3)

Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), makes it “unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, . . . any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate.” Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2021), in turn, provides that “it shall be unlawful for any person, directly or indirectly, in connection with any swap, . . . to intentionally or recklessly: (1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; (2) Make, or attempt to make, any untrue or misleading statement of a material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; 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.”

As described above Becker, among other things, intentionally or recklessly, directly and indirectly, in connection with swaps: (a) used or employed, or attempted to use or employ, manipulative devices, schemes, and artifices to defraud; (b) made, or attempted to make, untrue or misleading statements of material facts; (c) omitted to state material facts necessary in order to make statements made not untrue or misleading; and (d) engaged, or attempted to engage, in acts, practices, and courses of business, which operated or would operate as a fraud or deceit upon any person, in violation of Section 6(c)(1) of the Act, and Regulation 180.1(a)(1)-(3).⁴

IV. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Becker violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. § 180.1(a)(1)–(3) (2021).

V. OFFER OF SETTLEMENT

Becker has submitted the Offer in which he:

- A. Acknowledges service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Admits to all of the findings made in this Order;
- D. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any defense based on the statute of limitations applicable to any charges brought in connection with this Order;
 - 6. Any and all objections to the participation by any member of the Commission’s staff in the Commission’s consideration of the Offer;

⁴ Because certain swaps in connection with the fraud perpetrated by Becker are based on a broad-based securities index, this matter falls within the Commission’s jurisdiction. *See* Section 1a(47)(A) and (B) of the Act, 7 U.S.C. § 1a(47)(A), (B); *see also* Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48,208, 48,271 (Aug. 13, 2012) (“[A] Title VII instrument in which the underlying reference of the instrument is a security index that is not a narrow-based security index (i.e., the index is broad-based) is a swap subject to regulation by the CFTC”).

7. Any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2021), relating to, or arising from, this proceeding;
 8. 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 proceeding; and
 9. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- E. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Becker has consented in the Offer; and
- F. Consents to additional proceedings to determine what, if any, other sanctions may be assessed against him. In connection with such additional proceedings, he further consents that: (a) the findings of fact in Section II of this Order shall be accepted as and deemed true by the Commission or Presiding Officer; (b) Becker will be precluded from arguing that he did not violate the federal laws as described in Sections III and IV of this Order; and (c) he may not challenge the validity of his consents and agreements in the Offer or this Order; and
- G. Consents, solely on the basis of the Offer, to the Commission’s entry of this Order that:
1. Makes findings by the Commission that Becker violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. §180.1(a)(1)–(3) (2021);
 2. Orders Becker to cease and desist from violating Section 6(c)(1) of the Act and Regulation 180.1(a)(1)–(3); and
 3. Orders Becker to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

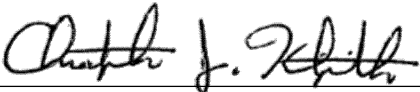
- A. Becker shall cease and desist from violating Section 6(c)(1) of the Act, 7 U.S.C. § 9(1), and Regulation 180.1(a)(1)–(3), 17 C.F.R. §180.1(a)(1)–(3) (2021).

- B. The Commission reserves its determination as to other sanctions against Becker at this time based upon his cooperation in a Commission investigation and related proceedings, pursuant to the terms of the Cooperation Agreement, and his undertaking to continue to cooperate, as set forth in this Order in Section VI.C.2 below. The determination of what, if any, other sanctions may be assessed against him will be made at a public hearing for the purpose of taking evidence and hearing arguments on the issue in accordance with the Commission's Rules of Practice, 17 C.F.R. pt. 10 (2021), at a time and place to be fixed as provided in Regulation 10.61, 17 C.F.R. § 10.61 (2021), except that in the additional proceedings: (a) the findings of fact in Section II of this Order shall be accepted as and deemed true by the Presiding Officer; (b) Becker will be precluded from arguing that he did not violate the federal laws as described in Sections III and IV of this Order; and (c) Becker may not challenge the validity of his consents and agreements in the Offer or this Order. All post-hearing procedures shall be conducted pursuant to Regulations 10.81-10.107, 17 C.F.R. §§ 10.81-10.107 (2021).
- C. Becker shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Becker agrees that neither he nor any agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Becker's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Becker 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.
 2. Cooperation with the Commission: Becker shall cooperate fully and truthfully with the Commission, including the Division, in any Proceedings. As part of such cooperation, Becker agrees to:
 - a. preserve and produce to the Commission in a responsive and prompt manner, as requested by Division staff, all relevant non-privileged documents, information, and other materials wherever located, in the appropriate possession, custody, or control of Becker;
 - b. utilize his knowledge and skill to explain transactions, interpret information and terminology, or identify new and productive lines of inquiry;
 - c. prepare and appear for interviews and testimony at such times and places as requested by Division staff;
 - d. respond completely and truthfully to all inquiries and interviews, when requested to do so by Division staff;

- e. identify and authenticate relevant documents and other evidentiary materials, execute affidavits and/or declarations, and testify completely and truthfully at depositions, trial, and other judicial proceedings, when requested to do so by Division staff;
 - f. enter into tolling agreements, when requested to do so by Division staff, during the period of cooperation;
 - g. waive any defense based on the statute of limitations applicable to any charges brought in connection with any Proceedings;
 - h. consent to procedural matters, when requested to do so by Division staff, in connection with the Proceedings;
 - i. accept service by mail, electronic mail, or facsimile transmission of notices or subpoenas for documents and/or testimony;
 - j. appoint his attorney as agent to receive service of such notices and subpoenas;
 - k. waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules in connection with requests or subpoenas of Division staff; and
 - l. serve by hand delivery or by next-day mail all written notices and correspondence required by or related to the Cooperation Agreement to the Director of the Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Three Lafayette Centre, Washington, DC 20581, unless otherwise directed in writing by Division staff.
3. Change of Address/Phone: Until such time as Becker satisfies in full his obligations as set forth in the Cooperation Agreement and this Order, Becker 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.

The provisions of this Order shall be effective as of this date.

By the Commission.



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: April 27, 2022