

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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9:06 am, Oct 20, 2022

In the Matter of:)
)
Chad Robert Henderson &)
Prime Agricultural Investors, Inc.,)
)
Respondents.)

CFTC Docket No. 23-01

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND 6(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 during the period from at least January, 2018 through at least September, 2019 (the “Relevant Period”), Chad Robert Henderson (“Chad Henderson” or “Henderson”) and Prime Agricultural Investors, Inc. (“Prime Agricultural Investors”) (collectively, “Respondents”), violated Section 4b(a)(1)(A) and (C) of the Commodity Exchange Act (“CEA” or “Act”), 7 U.S.C. § 6b(a)(1)(A), (C) by fraudulently transferring profitable futures transactions from customer accounts to Mr. Henderson’s account and, at times, transferring Mr. Henderson’s unprofitable futures transactions to customer accounts. In addition, during the Relevant Period Prime Agricultural Investors failed to supervise Henderson in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2021). 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, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and 6(d) of the Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledges service of this

Order.¹

The Commission acknowledges the cooperation of Respondents throughout the course of the investigation.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

From January, 2018 to September, 2019, Chad Henderson, in his capacity as an Associated person and Principal of Prime Agricultural Investors, at times transferred profitable futures transactions from his customers' commodity interest accounts to his own account. He also at times would transfer his own unprofitable futures transactions to his customers' accounts. In effect, Henderson allocated profits to himself that should have gone to his customers and, at times, avoided losses that he otherwise would have incurred.

Accordingly, during the Relevant Period, Respondents violated the Act by improperly transferring profitable customer transactions from customer accounts to Mr. Henderson's personal trading account, and also by fraudulently transferring losing transactions from Mr. Henderson's trading account to customer accounts. These transfers violated Section 4b(a)(1)(A) and (C) of the CEA, 7 U.S.C. § 6b(a)(1)(A), (C). In addition, during the Relevant Period Prime Agricultural Investors failed to diligently supervise Henderson in violation of Commission Regulation 166.3, 17 C.F.R. § 166.3 (2021).

B. RESPONDENTS

Chad Henderson is a registered Associated Person and Principal of Prime Agricultural Investors. He is a resident of Brookfield, Wisconsin.

Prime Agricultural Investors, Inc. is registered Introducing Broker located in Brookfield, Wisconsin.

C. FACTS

1. Fraud in Connection with Commodity Futures Transactions

As a principal of Prime Agricultural Investors, Chad Henderson transacted CME futures and options for customers, and also for his own trading account. These transactions were cleared

¹ Respondents consent to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and given preclusive effect therein, without further proof. Respondents do not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondents do not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

through a registered Futures Commission Merchant.

From January, 2018 to September, 2019, Henderson at times transferred profitable futures transactions in his customers' commodity interest accounts to his own account. He also at times would transfer his own unprofitable futures transactions to his customers' accounts. The fraudulent transactions included futures transactions in wheat, corn, soybeans, and cattle.

A number of transactions at issue took the following form. Henderson would get an order, usually by telephone, from a customer, who would direct Henderson to transact futures, but would give Henderson some leeway regarding the time, price and manner of the transaction. Henderson would transact futures consistent with these instructions in the customer's account. If the transaction was not profitable, or not profitable in the short term, Henderson would normally leave the transaction in the customer's account. However, if the market moved rapidly in the customer's favor, Henderson would, in some instances, move the transaction to his own account. Henderson could then enter another transaction for the customer at a higher price or, alternatively, tell the customer that it had not been possible to transact within the requested price range. In effect, Henderson, allocated profits to himself that should have gone to his customers. At times, Henderson also transferred losing transactions from his account to customers' accounts in order to avoid losses that he otherwise would have incurred. This conduct constituted fraud and willful deception in violation of Section 4b(a)(1) (A) and (C) of the Act.

Accordingly, during the Relevant Period, Respondents violated the Act by fraudulently transferring profitable customer transactions from customer accounts to Chad Henderson's personal trading account and also by fraudulently transferring losing transactions in Chad Henderson's trading account to customer accounts. These transfers violated Section 4b(a)(1)(A) and (C) of the CEA, 7 U.S.C. § 6b(a)(1) (A), (C).

Prime Agricultural Investors is liable, as a principal, for Henderson's conduct pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2021).

2. Failure to Diligently Supervise

Respondent Prime Agricultural Investors failed to adopt internal policies and procedures to effectively prevent this type of fraudulent trading activity. It did not, for instance, have a policy requiring that someone else in addition to the individual broker review trade transfer requests of the kind that Chad Henderson routinely made. Prime Agricultural Investors also failed to diligently supervise Chad Henderson in a manner sufficient to detect his repeated violations.

Prime Agricultural Investors' failure to implement robust policies and procedures to prevent fraudulent trade transfers between employee and customer accounts, and its failure to diligently supervise Chad Henderson, constituted failure to diligently supervise in violation of Commission Regulation 166.3.

During the Relevant Period, Prime Agricultural Investors violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2021) by failing to put in place controls sufficient to prevent Henderson's improper conduct.

III. LEGAL DISCUSSION

A. Respondents' Conduct Violated Sections Section 4b(a)(1) (A) and (C) of the Act, 7 U.S.C. § 6b(a)(1) (A), (C)

Section 4b(a)(1) (A) and (C) of the Act, 7 U.S.C. § 6b(a)(1) (A), (C) prohibit fraud and willful deception in connection with any contract of sale of any commodity in interstate commerce or for future delivery. This section makes it unlawful for any person, in connection with any order for future delivery that is made, on or subject to the rules of a designated contract market, for or on behalf of any other person to “(A) 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.”

The intentional allocation of trades to disadvantage customers constitutes fraud under Section 4b(a) of the Act. *See In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at *10 (Aug. 11, 1992), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993) (affirming ALJ's finding that respondents directed profitable fills to favored accounts in violation of Section 4b of the Act, and noting that burden of explaining allocation methodology shifts to respondent after Commission presents *prima facie* case of fraudulent allocation); *In re Lincolnwood Commodities, Inc.*, CFTC No. 78-48, 1984 WL 48104, at *21 (Jan. 31, 1984) (concluding that respondents fraudulently allocated winning day trades to their accounts and losing day trades to customers' accounts in violation of Section 4b of the Act); *see also In re Nikkhah*, CFTC No. 95-13, 2000 WL 622872, at *8-10 (May 12, 2000) (assessing the propriety of an allocation methodology for bunched orders).

Moreover, even allocations that “arbitrarily deprive[] a customer of a profit opportunity amounts to fraud” under Section 4b(a) of the Act. *Nikkhah*, 2000 WL 622872, at *8 (citing *United States v. Ashman*, 979 F.2d 469, 477-78 (7th Cir. 1992)). Accordingly, whatever allocation methodology is adopted “must be predetermined and fair, such that no customer or group of customers receives consistently favorable or unfavorable treatment.” *Id.* at *10 (quoting *GNP*, 1992 WL 201158, at *9) (“The proper focus is whether the weight of the evidence shows that [Respondent] acted with intent by knowingly employing an allocation process that was neither predetermined nor fair to all his discretionary account customers. . . .”).

A violation of Section 4b(a) requires that the wrongdoer act with scienter. *See Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988). Scienter “refers to a mental state embracing an intent to deceive, manipulate, or defraud.” *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 448 (D.N.J. 2000) (citing *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976)). Recklessness is sufficient to satisfy the scienter requirement of Section 4b of the Act. *See, e.g., Drexel*, 850 F.2d at 748; *Rosenberg*, 85 F. Supp. 2d at 448. The Commission can establish scienter by showing that a defendant made an extreme departure from the standards of ordinary care. *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002). Scienter cannot be avoided “by ignorance brought about by willfully or carelessly ignoring the truth.” *CFTC v. Savage*, 611 F.2d 270, 283 (9th Cir. 1979).

Respondents, during the Relevant Period, on several occasions improperly transferred profitable futures transactions in customer accounts to Chad Henderson's personal trading account, and also at times improperly transferred losing transactions in Chad Henderson's trading account to customer accounts. This conduct violated Section 4b(a)(1) (A) and (C).

B. Prime Agricultural Investors' Failure to Diligently Supervise Violated Regulation 166.3, 17 C.F.R. § 166.3 (2021)

Commission Regulation 166.3, 17 C.F.R. § 166.3 (2021) imposes on every Commission registrant, like Prime Agricultural Investors, an affirmative duty to “diligently supervise the handling by its partners, officers, employees and agents . . . of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents . . . relating to its business as a Commission registrant.”

A violation of Regulation 166.3 is an independent violation for which no underlying violation is necessary. *See, e.g., In re Collins*, CFTC No. 94-13, 1997 WL 761927, at *10 (Dec. 10, 1997) (“It is well-settled that a violation under Rule 166.3 is ‘an independent and primary violation for which no underlying violation is necessary.’” (citation omitted)); *In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at *17 n.11 (Aug. 11, 1992) (“Rule 166.3 establishes failure to supervise as an independent and primary violation. . . .” (citation omitted)), *aff’d in part and modified sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993).

For a registrant to fulfill its duties under Regulation 166.3, it must both design an adequate program of supervision and ensure that the program is followed. *See GNP Commodities*, 1992 WL 201158, at *17–19 (providing that, even if an adequate supervisory system is in place, Regulation 166.3 can still be violated if the supervisory system is not diligently administered). As a result, a violation of Regulation 166.3 “is demonstrated by showing either that: (1) the registrant’s supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently.” *In re FC Stone, LLC*, CFTC No. 15-21, 2015 WL 2066891, at *3 (May 1, 2015) (consent order) (citations omitted).

Accordingly, a “showing that the registrant lacks an adequate supervisory system can be sufficient to establish a breach of duty under Regulation 166.3.” *Collins*, 1997 WL 761927, at *10. If the registrant fails to perform its supervisory duties diligently, that is likewise sufficient to establish a violation of the supervision requirement. *See, e.g., In re Murlas Commodities, Inc.*, CFTC No. 85-29, 1995 WL 523563, at *9 (Sept. 1, 1995); *In re Paragon Futures Ass’n*, CFTC No. 88-18, 1992 WL 74261, at *14 (Apr. 1, 1992). Evidence of violations that “should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly” is probative of a failure to supervise. *Paragon Futures*, 1992 WL 74261, at *14.

Here, Respondent Prime Agricultural Investors failed to adopt internal policies and procedures sufficient to prevent the fraudulent trade transfers, and also failed to diligently supervise Chad Henderson in a manner sufficient to detect his repeated violations. Accordingly, Respondent violated Regulation 166.3.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondents violated Section 4b(a)(1) (A) and (C) of the CEA, 7 U.S.C. § 6b(a)(1) (A), (C).

The Commission further finds that Respondent Prime Agricultural Investors violated Regulation 166.3, 17 C.F.R. § 166.3 (2021).

V. OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission to all the matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on a violation of or enforcement of this Order;
- C. Waive:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;
 - 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 - 6. Any and all claims that they 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;
 - 7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, ("SBREFA"), Pub. L. No. 104-121, tit. II, §§ 201-253, 110 Stat 847-74 (codified as amended in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 - 8. Any claims of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer; and
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
 - 1. Makes findings by the Commission that Respondents violated Section 4b(a)(1) (A) and (C) of the Commodity Exchange Act, 7 U.S.C. § 6b(a)(1) (A), (C), and that Respondent Prime Agricultural Investors violated Regulation 166.3, 17 C.F.R. § 166.3 (2021).
 - 2. Orders Respondents to cease and desist from violating Section 4b(a)(1) (A) and (C)

of the Commodity Exchange Act, 7 U.S.C. § 6b(a)(1) (A), (C), and orders Respondent Prime Agricultural Investors to cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2021).

3. Orders that Respondent Chad Henderson be prohibited from, directly or indirectly, engaging in 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), for a period of three years after the date of entry or this Order and all registered entities shall refuse him trading privileges during that period.
4. Orders that Respondents shall pay, jointly and severally, restitution, in the amount of four hundred and sixty three thousand four hundred and fifty nine dollars and sixty three cents (\$463,459.65) (“Restitution Obligation”), plus any post- judgment interest; provided, however, that the restitution will be offset by any restitution payment made pursuant to the manner delineated by Respondents’ Notice of Disciplinary Action issued by the Chicago Mercantile Exchange (“CME”) (the “CME Notice”).
5. Orders that Respondent Chad Henderson shall pay a civil monetary penalty in the amount of three-hundred thousand dollars (\$300,000) (“Henderson CMP Obligation”) and that Respondent Prime Agricultural Investors shall pay a civil monetary penalty in the amount of one-hundred thousand dollars (\$100,000) (“Prime Agricultural Investors CMP Obligation”) (collectively, “CMP Obligations”). Prime Agricultural Investors shall be jointly and severally liable for the Henderson CMP Obligation. The CMP Obligations should be paid within ten business days of the date of the entry of this Order; provided, however, that the CMP Obligations will be offset by the amount of any fine made pursuant to the CME Notice.
6. Orders that Respondent Chad Henderson agrees that he shall never, directly or indirectly:
 - a. Control or direct the trading for himself, or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
 - b. Receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests.
7. Orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and 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. Respondents shall cease and desist from violating Section 4b(a)(1) (A) and (C) of the Commodity Exchange Act, 7 U.S.C. § 6b(a)(1) (A), (C), and Respondent Prime Agricultural Investors shall cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2021).
- B. Respondent Chad Henderson is prohibited from, directly or indirectly, engaging in 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) for a period of three years after the date of entry of this Order, and all registered entities shall refuse him trading privileges during that period.
- C. Respondents shall pay, jointly and severally, restitution, in the amount of four hundred and sixty three thousand four hundred and fifty nine dollars and sixty three cents (\$463,459.65) (“Restitution Obligation” within ten days of the date of the entry of this Order; provided, however, that the restitution will be offset by the amount of any restitution payment made pursuant to the CME Notice. If the Restitution Obligation is not paid in full within ten days of the date of entry of the Order, then post-judgment interest shall accrue on any unpaid portion of the required restitution beginning on the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961.

Respondent shall offer proof of any payment pursuant to the CME Notice, including the amount by which the Restitution Obligation is to be reduced, within ten days of making such payment to:

Paul Hayeck
Deputy Director, Division of Enforcement
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

- D. Orders that Respondent Chad Henderson shall pay a civil monetary penalty in the amount of three-hundred thousand dollars (\$300,000) (“Henderson CMP Obligation”) and that Respondent Prime Agricultural Investors shall pay a civil monetary penalty in the amount of one-hundred thousand dollars (\$100,000) (“Prime Agricultural Investors CMP Obligation”) (collectively, “CMP Obligations”). Prime Agricultural Investors shall be jointly and severally liable for the Henderson CMP Obligation. The CMP Obligations should be paid within ten business days of the date of the entry of this Order; provided, however, that the CMP Obligations will be offset by the amount of any fine made pursuant to the CME Notice. If the CMP Obligations are not paid in full within ten days of the date of entry of the Order, then post-judgment interest shall accrue on any unpaid portion of the CMP Obligations beginning on the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961.

Respondents shall pay their respective CMP Obligations, and any post-judgment interest, by

electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, Respondent shall make the payment payable to the Commodity Futures Trading Commission, and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-amz-ar-cftc@faa.gov

If payment is to be made by electronic transfer, Respondents shall contact Tonia King or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondents shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- E. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondents agree that neither they nor any of their successors, assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents' (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
 2. Respondent Chad Henderson agrees that he shall never, directly or indirectly:
 - a. Control or direct the trading for himself, or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
 - b. Receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests.
 3. Respondent Chad Henderson agrees that he shall not, for a period of three years from the date of entry of this order, directly or indirectly:
 - a. enter into any transactions involving "commodity interests" (as that term is

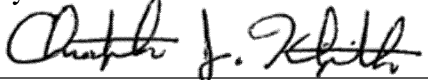
defined in Regulation 1.3, 17 C.F.R. § 1.3 (2021)) for his own personal accounts or for any accounts in which he has a direct or indirect interest;

- b. have any commodity interests traded on his behalf;
 - c. apply for registration or claim exemption from registration with the Commission in any capacity, and engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).
4. Respondent Prime Agricultural Investors agrees to implement procedures and internal controls designed to prevent the improper allocation of trades.
 5. Partial Satisfaction: Respondents understand and agrees that any acceptance by the Commission of any partial payment of Respondents' CMP Obligations shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
 6. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligations as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.
 7. Notices to Creditors: Until such time as Respondents satisfy in full their CMP Obligations, upon the commencement by or against Respondents of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondents' debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

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

By the Commission.



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

Dated: October 20, 2022