

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

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In the Matter of	:	CFTC DOCKET NO. 01-02
	:	
Frederic J. Mersch	:	COMPLAINT AND NOTICE
15 Timberlane	:	OF HEARING PURSUANT TO
Sioux City, Iowa 51108,	:	SECTIONS 6(c) AND 6(d)
	:	OF THE COMMODITY
Respondent.	:	EXCHANGE ACT, AS AMENDED
_____	:	

I.

The Commodity Futures Trading Commission ("Commission") has received information from its staff that tends to show and the Commission's Division of Enforcement ("Division") alleges that:

SUMMARY

1. At various times during the period of August 2, 1996 through March 31, 1999 ("relevant period"), the respondent Frederic J. Mersch ("Mersch") traded his own commodity accounts and controlled the trading in at least eight other accounts carried respectively in the names of his wife and four adult children, and three other acquaintances. When aggregated, futures positions in the accounts controlled by Mersch exceeded the position limits for frozen pork belly futures at the Chicago Mercantile Exchange ("CME") on one (1) day in August 1996 and four (4) days in March 1998. In addition, Mersch filed two false reports with the Commission that failed to disclose that he controlled the family and other accounts. Mersch also failed to update one of his inaccurate reports and held reportable positions on at least 160 trading days while the report remained inaccurate.

## RESPONDENT

2. Frederic J. Mersch resides at 15 Timberlane, Sioux City, Iowa 51108. Mersch periodically has traded commodities since approximately 1975. During the relevant period, Mersch's principal occupation was as president and owner of Mechanical Refrigeration Corporation, Inc. ("Mechanical") in Sioux City, Iowa, which manufactures and installs industrial ammonia refrigeration systems. Mersch has never been registered with the Commission in any capacity.

## OTHER INVOLVED PERSONS

3. During the relevant period, Mersch was married to Barbara Mersch. Mersch had four children, namely, David, Pamella, Carrie and Frederic S. Mersch. Neither Barbara Mersch nor any of the children has ever been registered with the Commission in any capacity.

4. Timothy Merchant ("Merchant") is a Sioux City, Iowa resident who worked for Mechanical from approximately 1991 through 1996. Merchant has never been registered with the Commission.

5. Rodney LaCoste ("LaCoste") is a Florida resident and personal friend of Mersch. LaCoste has never been registered with the Commission.

6. Kenneth Schatz ("Schatz") is a resident of Sioux City, Iowa, who worked for Mechanical from approximately February 1997 to April 1999. Schatz has never been registered with the Commission.

7. John A. Sailer ("Sailer") is a resident of Le Mars, Iowa. Since 1994, Sailer has been the general business manager of Mechanical. Sailer has never been registered with the Commission.

## REQUIRED RECORDS AND LIMITS

8. During the period August 1996 through March 1997, the Commission required that certain reports be filed for each commodity futures account with a "reportable position" as defined by Commission Regulations ("Regulations") 15.00(b)(1)(i) and 15.03, 17 C.F.R. §§ 15.00(b)(1)(i) and 15.03 (2000). Pursuant to Regulation 15.03, the reportable position for frozen pork belly futures was twenty-five (25) contracts.

9. During the period August 1996 through March 1997, pursuant to Regulation 18.04, 17 C.F.R. § 18.04 (1996), every trader who held or controlled a reportable position had to file "A Statement of Reporting Trader" ("Form 40") with the Commission not later than the tenth business day following the date the trader assumed the reportable position.

10. Pursuant to Regulation 18.04(a)(5), 17 C.F.R. § 18.04(a)(5) (2000), a reporting trader completing a Form 40 must provide the name and address of each person whose trading the reporting trader controls. Pursuant to Regulation 18.04(a)(9)(ii), 17 C.F.R. § 18.04(a)(9)(ii) (2000), a reporting trader must also provide the names of other trader accounts in which the reporting trader has a ten-percent or greater financial interest.

11. Pursuant to Regulation 18.04(d), 17 C.F.R. § 18.04(d) (1996), a trader who held or controlled a reportable position had a duty to update previously filed information that was no longer accurate concerning the name and address of each person whose account the reporting trader controlled and any account in which the reporting trader held a ten-percent or greater financial interest. This duty existed until Regulation 18.04(d) was rescinded by the Commission effective April 14, 1997.

12. The CME, which is located at 30 South Wacker Drive, Chicago, Illinois, is, and was during the relevant period, a designated contract market for trading in frozen pork belly

futures pursuant to Section 5 of the Commodity Exchange Act, as amended ("Act"),  
7 U.S.C. § 7 (1994).

13. During the period August 1996 through April 1998, CME Rule 1402.E provided that futures position limits for frozen pork bellies were:

- 1) 1,000 contracts net long or short in all contract months;
- 2) 800 contracts long or short in any contract month;
- 3) 200 contracts long or short in the May contract or 150 contracts long or short in any other expiring contract month as of the close of business on the first business day following the first Friday of the contract month; and

- 4) 150 contracts long or short in the May contract or 100 contracts long or short in any other expiring contract month as of the close of the business on the sixth business day following the first Friday of the contract month.

The Commission approved these limits on February 10, 1994.

14. During the period August 1996 through April 1998, CME Rule 1402.F included provisions that, for the purposes of Rule 1402, the positions of all accounts directly or indirectly owned or controlled by a person or persons, and the positions in all accounts in which a person or persons have a proprietary or beneficial interest, shall be cumulated.

## TRADING AND FUNDING OF THE RELEVANT ACCOUNTS

15. In July 1990, Mersch opened and later traded a commodity account at Refco, Inc. ("Refco"), a registered futures commission merchant ("FCM"), introduced through Paul Meloy ("Meloy"), a registered introducing broker ("IB"), doing business as Cattleman's Commodities. In October 1997, Mersch also opened and later traded a second commodity account at LFG, LLC ("LFG"), a registered FCM, introduced through Clark Ag Marketing Services ("Clark Ag"), a registered IB.

16. In November 1990, Barbara Mersch opened a commodity account with Refco that was introduced through Meloy. In December 1998, Barbara Mersch opened a commodity account at LFG that was introduced through Clark Ag. Mersch controlled the trading and provided most, if not all, of the funds for these accounts.

17. In August 1992, Carrie Mersch opened an account at Refco that was introduced through Meloy. Mersch controlled the trading and provided most, if not all, of the funds for that account.

18. In December 1996, Frederic S. Mersch opened an account at LFG that was introduced through Clark Ag. Mersch controlled the trading and provided most, if not all, of the funds for that account.

19. In February 1997, Pamella Mersch opened an account at LFG that was introduced through Clark Ag. Mersch controlled the trading and provided most, if not all, of the funds for that account.

20. In February 1999, David Mersch opened an account at Refco that was introduced through Meloy. Mersch controlled the trading and provided most, if not all, of the funds for this account.

21. In May 1992, Merchant opened an account at Refco that was introduced through Meloy. Mersch and Merchant shared control of the trading of Merchant's account.

Beginning at least in March 1996, Mersch also provided most, if not all, of the funds for Merchant's account.

22. Schatz opened two commodity accounts -- one at LFG that was introduced through Clark Ag in February 1997; and another at Refco that was introduced through Meloy in June 1997. Mersch controlled the trading and provided most, if not all, of the funds for Schatz's accounts.

23. In February 1998, LaCoste opened an account at LFG that was introduced through Clark Ag. Mersch controlled the trading and provided most, if not all, of the funds for LaCoste's account.

24. Sailer opened and traded two commodity accounts -- one at Refco that was introduced through Meloy in July 1996; and another at LFG that was introduced through Clark Ag in December 1996. Mersch provided most, if not all, of the funds for Sailer's accounts.

25. The monies Mersch advanced to fund the accounts of his wife, his children, Merchant, Schatz, LaCoste and Sailer were purported loans that had to be repaid by the account holders if the trading in their accounts was profitable.

#### FILING REPORTS WITH THE COMMISSION

26. On or about August 2, 1996, Mersch held or controlled a reportable position in frozen pork belly futures at the CME.

27. On August 2, 1996, Mersch signed a Form 40 ("1996 Form 40") that was filed with the Commission, in which he reported that he did not control the commodity trading of

any other person. At that time, he controlled the accounts of Barbara Mersch and Carrie Mersch.

28. In that 1996 Form 40, Mersch also failed to report that he had at least a ten-percent financial interest in the accounts of Carrie and Barbara Mersch. At that time, he had loaned the majority, if not all, of the money used for funding those accounts and expected repayment of the advanced funds from any trading profits.

29. Mersch also never amended his 1996 Form 40 to make it accurate.

30. On March 19, 1999, Mersch signed another Form 40 ("1999 Form 40") that was filed with the Commission, in which he acknowledged that he controlled the futures trading of Barbara and Carrie Mersch. Mersch failed to report that he also controlled the trading for his son David Mersch and Timothy Merchant.

31. In that 1999 Form 40, Mersch also failed to report that he had at least a ten-percent financial interest in the accounts of Carrie, Barbara or David Mersch, Timothy Merchant or John Sailer. At that time, Mersch had loaned the majority, if not all, of the money used for funding those accounts and expected repayment of the advanced funds from any trading profits.

32. During the period of August 6, 1996 through April 13, 1997, Mersch held or controlled a reportable position in frozen pork belly futures on at least 160 trading days. During that same period, he also traded commodities on at least 100 days while holding or controlling a reportable position.

COUNT ONE

VIOLATIONS OF SECTIONS 4a(e) OF THE ACT:  
MERSCH EXCEEDED EXCHANGE TRADING LIMITS

33. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

34. On August 7, 1996, and March 17, 18, 25, and 26, 1998, Mersch held or controlled frozen pork belly futures positions that exceeded the CME's rule fixing limits for such positions that could be held by any person. (Attached Appendix 1 sets forth the relevant accounts and positions).

35. Section 4a(e) of the Act, 7 U.S.C. § 6(a)(e) (1994), prohibits, inter alia, any person from holding futures positions in excess of the exchange trading limits.

36. By the acts alleged in this count, Mersch violated Section 4a(e) of the Act. Each of the five trading days that Mersch held or controlled frozen pork belly futures positions in excess of the CME's trading limits constitutes a separate violation of Section 4a(e) of the Act.

COUNT TWO

VIOLATIONS OF SECTION 6(c) OF THE ACT  
AND REGULATION 18.04(a)(5): MERSCH'S  
FILING OF FALSE FORM 40s

37. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

38. By signing and filing the 1996 Form 40, Mersch willfully made a false statement of material fact to the Commission, in that he failed to disclose that he controlled the commodity trading of Barbara and Carrie Mersch.

39. By signing and filing the 1999 Form 40, Mersch willfully made a false statement of material fact to the Commission, in that he failed to disclose that he controlled the commodity trading of David Mersch and Timothy Merchant.

40. Section 6(c) of the Act, 7 U.S.C. § 9 (1994), prohibits, inter alia, the willful making of a false statement of material fact on any report filed with the Commission.

41. By the acts alleged in this count, Mersch violated Section 6(c) of the Act, 7 U.S.C. § 9 (1994), and Regulation 18.04(a)(5), 7 C.F.R. § 18.04(a)(5) (2000). Each filing of a false Form 40 constitutes a separate violation of Section and 6(c) of the Act and Regulation 18.04(a)(5).

### COUNT THREE

#### VIOLATIONS OF REGULATIONS 18.04(a)(5). AND 18.04(a)(9)(ii): MERSCH'S FAILURE TO FILE ACCURATE FORM 40s

42. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

43. In his 1996 Form 40, Mersch failed to disclose that he controlled the commodity trading of Barbara and Carrie Mersch and also failed to report that he had ten-percent or greater financial interest in their trading accounts.

44. In his 1999 Form 40, Mersch failed to disclose that he controlled the commodity trading of David Mersch and Timothy Merchant and also failed to report that he had ten-percent or greater financial interest in their trading accounts and the accounts of Barbara and Carrie Mersch and John Sailer.

45. As alleged by the acts in this count, Mersch filed inaccurate Form 40s and violated Regulations 18.04(a)(5) and 18.04(a)(9)(ii), 7 C.F.R. §§ 18.04(a)(5) and 18.04(a)(9)(ii) (2000). Each filing of an inaccurate Form 40 constitutes a separate violation of Regulations 18.04(a)(5) and 18.04(a)(9)(ii).

## COUNT FOUR

### VIOLATIONS OF SECTION 4i OF THE ACT AND REGULATION 18.04(d): MERSCH'S FAILURE TO UPDATE HIS INACCURATE FORM 40

46. Paragraphs 1 through 32 and 43 are realleged and incorporated herein by reference.

47. Pursuant to Regulation 18.04(d), after filing the 1996 Form 40 and while holding or controlling a reportable position, Mersch had a duty to update inaccurate information on that Form 40 regarding the name and address of any person whose futures trading he controlled and the name of any other trader accounts in which the he had a ten-percent or greater financial interest. Pursuant to Section 4i of the Act, 7 U.S.C. § 6i (1994), Mersch also was prohibited from entering into any futures trading or from holding open futures positions in excess of amounts fixed by the Commission unless he filed accurate reports with the Commission.

48. As alleged by the acts in this count, Mersch violated Section 4i of the Act, 7 U.S.C. § 6i (1994), and Regulation 18.04(d), 7 C.F.R. § 18.04(d) (1996). Each trading day from August 2, 1996 through April 13, 1997 that Mersch entered into futures trading or held reportable positions and failed to update his inaccurate Form 40 constitutes a separate violation of Section 4i of the Act and Regulation 18.04(d). (Attached Appendix 2 sets forth the relevant accounts and dates).

## II.

By reason of the foregoing allegations by the Division, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute administrative proceedings to determine whether the allegations set forth in Part I, above,

are true and, if so, whether an appropriate order should be entered in accordance with Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9 and 13b (1994).

Section 6(c) of the Act allows the Commission to enter an order: (1) prohibiting a respondent from trading on or subject to the rules of any contract market and requiring all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the Commission's Order, (2) if such respondent is registered with the Commission in any capacity, suspending, for a period not to exceed six months, or revoking the registration of that respondent, and (3) assessing against the respondent a civil penalty of not more than the higher of \$110,000 or triple the monetary gain to the respondents for each violation of the Act or Regulations committed after November 27, 1996, and a civil penalty of not more than the higher of \$100,000 or triple the monetary gain to the respondents for each violation of the Act or Regulations committed before November 27, 1996.

Section 6(d) allows the Commission to enter an Order directing that the respondent cease and desist from violating the provisions of the Act and Regulations found to have been violated.

### III.

WHEREFORE, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence and hearing arguments on the allegations set forth in Section I, above, be held before an Administrative Law Judge, in accordance with the Rules of Practice under the Act, 17 C.F.R. § 10.1 *et seq.* (2000), at a time and place to be fixed as provided in Section 10.61 of the Rules, and that all post-hearing procedures shall be conducted pursuant to Sections 10.81 through 10.107 of the Rules of Practice, 17 C.F.R. §§ 10.81 through 10.107.

IT IS FURTHER ORDERED that the Respondent shall file an Answer to the allegations against the Respondent in the Complaint within twenty (20) days after service, pursuant to Section 10.23 of the Rules of Practice, 17 C.F.R. § 10.23, and pursuant to Section 10.12(a) of the Rules of Practice, 17 C.F.R. § 10.12(a), shall serve two copies of such Answer and of any document filed in this proceeding upon Scott R. Williamson, Acting Regional Counsel, or William P. Janulis, Trial Attorney, Commodity Futures Trading Commission, Division of Enforcement, 300 South Riverside Plaza, Suite 1600-N, Chicago, Illinois 60606, or upon such other counsel as designated by the Division. If the Respondent fails to file the required Answer or fails to appear at a hearing after being duly served, the Respondent shall be deemed in default, and the proceeding may be determined against the Respondent upon consideration of the Complaint, the allegations of which shall be deemed true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served on the Respondent personally or by certified or registered mail forthwith pursuant to Section 10.22 of the Commission's Rules, 17 C.F.R. § 10.22 (2000).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of the investigative or prosecutorial functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter, except as witness or counsel in proceedings held pursuant to notice.

Date: November 7, 2000

By the Commission.

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Catherine D. Dixon  
Assistant Secretary of the Commission  
Commodity Futures Trading Commission