

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

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In the Matter of : CFTC Docket No. 01-06  
TIMOTHY MURPHY :  
Respondent. :  
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**ORDER MAKING FINDINGS AND IMPOSING SANCTIONS  
AS TO RESPONDENT TIMOTHY MURPHY**

**I.**

On January 10, 2001 the Commodity Futures Trading Commission ("Commission") filed a Complaint and Notice of Hearing ("Complaint") against Timothy Murphy (the "Respondent" or "Murphy"). The Complaint charges that Murphy violated Sections 4c(a)(A) and (B) and 4c(b) and 4g(a) of the Commodity Exchange Act, ("the Act"), 7 U.S.C. §§ 6c(a)(A) and (B) and 6c(b) and 6g(a), and Sections 1.35(d), 1.38 and 33.10 of the regulations promulgated thereunder ("the Regulations"), 17 C.F.R. §§ 1.35(d), 1.38 and 33.10, and aided and abetted violations of Section 4c(b) of the Act and Section 33.10 of the Regulations pursuant to Section 13(a) of the Act, 7 U.S.C. §13c(a) (1994).

**II.**

In order to dispose of the allegations and issues raised in the Complaint as to him, Murphy has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the allegations of the Complaint or the findings herein, Murphy acknowledges service of this Order Making Findings and Imposing Remedial Sanctions ("Order"). Murphy consents to the use of the findings contained in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.<sup>1</sup>

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<sup>1</sup> Murphy does not consent to the use of his Offer or the findings in this Order, consented to in his Offer, as the sole basis for any other proceeding brought by the Commission, other than a proceeding brought to enforce the terms of this Order. Murphy also does not consent to the use of his Offer or the findings in the Order by any other person or entity in this or in any other proceeding. The findings made in the Order are not binding on any other person or entity named as a defendant or respondent in this or any other proceeding.

### III.

The Commission finds the following:

#### A. SUMMARY

From September 27, 1999 through October 5, 1999 ("the relevant period"), Murphy executed fraudulent trades in the COMEX gold options ring of the Commodity Exchange, Inc. ("COMEX"), a Division of the New York Mercantile Exchange ("NYMEX"). Murphy engaged in a total of three instances of trading ahead of executable customer orders, in violation of Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations, and a total of eight instances of illegal price changes on trades executed to fill their customers' orders, in violation of Sections 4c(a)(A), 4c(a)(B) and 4c(b) of the Act and Section 33.10(b) of the Regulations. Murphy also aided and abetted other broker's price changes in violation of Section 4c(b) of the Act and Sections 33.10(a) and (c) of the Regulations, pursuant to Section 13(a) of the Act. The fraudulent price changes were executed noncompetitively in violation of Section 1.38 of the Regulations. Murphy benefited financially from trading ahead of executable customer orders and from aiding and abetting other brokers' price changes. Murphy also violated the recordkeeping requirements of Section 4g(a) of the Act and Section 1.35(d) of the Regulations between September 27 and October 8, 1999.

#### B. SETTLING RESPONDENT

Timothy Murphy, who resides at 97 Shadow Lane, New Rochelle, New York 10801, has been a dual trading member of COMEX since May 1982 and predominantly traded silver futures contracts. At all times relevant to this matter, Murphy has been registered with the Commission as a floor broker and was a dual trader<sup>2</sup> in gold options who filled customer orders for FIC Commodities Corp. ("FIC").

#### C. FACTS

From September 27, 1999 through October 8, 1999, gold trading volume and volatility increased on the COMEX. In particular, on September 28, 1999, gold futures and options contracts traded in record volume for both number of contracts and trades. The gold options market traded 81,317 contracts in 15,044 trades, which was more than double the previous record volume of 39,944 contracts and more than twelve times the normal number of trades executed.<sup>3</sup> The price of the December gold futures contract rose as much as \$45.20 per ounce from the previous day's settlement price, and settled at \$310, \$26.20 above the previous day's settlement price. The price of

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<sup>2</sup> A dual trader is a floor broker who executes customer orders during any trading session in the same contract market in which the floor broker executes trades for his own account. Section 4j(a)(2) of the Act, 17 U.S.C. § 6j(a)(2).

<sup>3</sup> See Division of Economic Analysis permanent record data for gold options for the period of September 27, 1999 through October 27, 1999; See also Division of Trading & Markets ("T&M"), "A Review of Gold Options Trading on September 28, 1999," [www.cftc.gov/tm/gold\\_options\\_report031000.htm](http://www.cftc.gov/tm/gold_options_report031000.htm) ("T&M Report") at 2-4.

the December 1999 \$300 gold call option traded in the range of \$5 to \$29.<sup>4</sup> Consequently, on that day, gold options brokers received an unprecedented number of customer orders, mostly small-lot retail customer telephone and machine-generated orders.

### **1. Trading Ahead of Executable Customer Orders**

In a total of three instances, Murphy bought or sold gold call options for his personal account at better premiums than his customers paid or received while Murphy held executable orders from those customers to buy or sell gold call options for the same contract month and strike price.<sup>5</sup>

During the relevant period, Murphy executed trades for himself in gold options ahead of executable customer orders in the same options. The evidence shows that Murphy held substantial quantities of executable small-lot customer orders and that gold options floor clerks were rapidly receiving more orders than they were conveying to Murphy in the pit. Murphy held stacks of executable customer orders for the same options he was trading for his own account.

### **2. Changing Prices on Trades to Fill Customer Orders**

Murphy changed prices on eight of his customers' trades. These price changes benefited the opposite broker's personal account or that of another COMEX member. Murphy also changed prices to benefit his personal account to the detriment of the opposite broker's customer. In all of the price changes, the traders executed the trade at the same price and recorded it on their trading cards, and then changed it to a price that was less favorable to the customer. In most instances, the price was also changed on the floor order ticket. Murphy engaged in eight instances of illegal price changes and benefited financially from another member's illegal price change in one instance.

### **3. Recordkeeping Violations**

Members of contract markets are required by the Act and the Regulations to prepare and retain certain records. In particular, Section 1.35(d) of the Regulations requires that members prepare a trading card or other record detailing the trades executed by them. This Regulation specifies that members record trades sequentially, without skipping lines and that the trading cards be properly identified and numbered.

Murphy's trading cards for the relevant period lacked one or more of the following required items of information: (a) the member's name or identification, (b) the date, hour or minute of the transaction, and (c) failed to crossout unused lines on his trading cards. In other

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<sup>4</sup> T&M Report at 1.

<sup>5</sup> A COMEX gold contract consists of 100 ounces and prices are reported in dollars and cents per ounce. A call option is an option to buy and a put option is an option to sell a COMEX gold futures contract and the price or premium is in dollars and cents per ounce. A fluctuation of \$1 is equivalent to \$100 per contract. Therefore, a call option to buy a COMEX gold contract at the \$280 strike for a premium of \$5.00 will cost the purchaser \$5.00 x 100oz. = \$500.

numerous instances, Murphy failed to cross out unused lines on his trading cards as required by Section 1.35(d) of the Regulations.

## **D. LEGAL DISCUSSION**

### **1. FRAUD IN CONNECTION WITH COMMODITY OPTION TRANSACTIONS**

Murphy cheated, defrauded and deceived his customers by trading ahead of executable customer orders and by making illegal price changes on executed transactions.

Section 4c(b) of the Act prohibits any person from offering to enter into, entering into, or confirming the execution of any transaction involving commodity options contrary to any regulation promulgated by the Commission.<sup>6</sup> Section 33.10 of the Regulations makes it illegal for any person to (a) cheat or defraud or attempt to cheat or defraud any other person; . . . or (c) deceive or attempt to deceive any other person by any means whatsoever in connection with an offer to enter into . . . any commodity option transaction.<sup>7</sup> Trading ahead and non-competitive trading practices constitute fraud in violation of Section 4c(b) of the Act and Section 33.10 of the Regulations. A broker has an obligation to act in the best interests of his customers,<sup>8</sup> which includes a duty to seek the best possible price for his customers.<sup>9</sup> A broker violates that duty when he chooses instead to act on behalf of himself (or someone other than his customer) to the disadvantage of his customer.<sup>10</sup>

Fraud under the Act and Regulations requires a showing of scienter.<sup>11</sup> Scienter is established when a respondent commits a wrongful act intentionally or with reckless disregard.<sup>12</sup> A reckless act is one where there is so little care that it is “very difficult to believe the [actor] was not aware of what he was doing.”<sup>13</sup> Scienter cannot be avoided by ignorance brought about by willfully or carelessly ignoring the truth.<sup>14</sup>

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<sup>6</sup> 7 U.S.C. § 6c(b).

<sup>7</sup> 17 C.F.R. § 33.10.

<sup>8</sup> *In re Murphy*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,798, at 31,351-52 (CFTC Sept. 25, 1985).

<sup>9</sup> *United States v. Ashman*, 979 F.2d 469, 478 (7th Cir. 1992); *United States v. Dial*, 757 F.2d 163, 168 (7th Cir. 1985).

<sup>10</sup> *In re Murphy*, ¶ 22,798 at 31,351-52.

<sup>11</sup> *In re Staryk*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,206, at 45,810 (CFTC Dec. 18, 1997). See also *Reddy v. CFTC*, 191 F.3d 109, 119 (2d Cir. 1999).

<sup>12</sup> *Hammond v. Smith Barney, Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 (CFTC Mar. 1, 1990).

<sup>13</sup> *Do v. Lind-Waldock & Co.*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,516, at 43,321 (CFTC Sept. 27, 1995); *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748-49 (D.C. Cir. 1988).

<sup>14</sup> See *CFTC v. Savage*, 611 F.2d 270, 283 (9th Cir. 1979); see also *Do v. Lind-Waldock & Co.*, ¶ 26,516, at 43,321 (an employee acted recklessly by failing to ascertain the status of an order prior to advising the customer that it was too late to cancel).

Murphy had a duty to his clients to execute their orders in a manner where he would not personally profit at his customers' expense. Murphy's knowing or reckless disregard of his obligations to his customers constitutes fraud.

### **A. Trading Ahead of Executable Customer Orders**

By recklessly trading ahead of his executable customer orders, Murphy committed fraud.<sup>15</sup> Trading ahead occurs when a dual trading floor broker intentionally buys or sells for his own account while holding an executable customer order on the same side of the market.<sup>16</sup> The Division must prove that a dual trading floor broker held an executable customer order while executing trades for his account, and did so with scienter.

The evidence establishes that at the time that Murphy traded for his personal account, he held executable customer orders in the same options in which he traded personally. Further, Murphy acted with scienter because he recklessly disregarded the fact that he held executable orders at the times that he traded at better prices for himself.

Murphy knew that the market was particularly volatile and active during the relevant period, and particularly so on September 28, 1999, the day on which most of the trading ahead violations occurred. He also knew that this heightened level of activity was directly reflected in the stacks of orders that he held in his deck and was continuing to receive from clerks. Moreover, Murphy was executing orders from customers at the same strike prices and in the same contract months he was trading for his own account. Based upon this information and other facts and circumstances, it was reckless for Murphy, acting as a dual trader, to disregard the likelihood that the orders that he held included executable orders in the same options in which he traded for himself. Murphy had an obligation to be cognizant of customer orders that he held prior to trading for himself.

Despite his knowledge and obligations, Murphy continued to dual trade without taking any steps to ensure that he was satisfying his obligations to act in the best interests of his customers. Murphy took advantage of the active market to trade for his personal benefit and deprive customers of the best possible price for their orders. By recklessly disregarding his duty to execute customer orders in a manner where he would not personally profit at his customers' expense, Murphy committed fraud in violation of Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations.

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<sup>15</sup> *United States v. Dial*, 757 F.2d at 168-170 (an associated person trading ahead of his customers committed fraud by depriving customers of profits they would have made except for the improper execution of their orders). The Commission and the COMEX's rules recognize the importance of prohibiting trading ahead. Section 155.2 of the Regulations requires that each contract market adopt rules prohibiting trading ahead. Pursuant to that Regulation, COMEX promulgated its Rule 4.31(a)(ii) concerning dual trading, which expressly prohibits trading ahead by providing that a floor member may not purchase or sell any futures call option or futures put option in a commodity, either directly or indirectly, for his own account while holding an order for another person in the same commodity which is executable at the market price or at the price at which such purchase can be either directly or indirectly for the member's own account.

<sup>16</sup> See *In re Rousso*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,133, at 45,309 (CFTC Aug. 20, 1997), *aff'd*, 1998 U.S. App. LEXIS 22590 (2d Cir. 1998).

## B. Price Changes

Murphy also committed fraud by changing the prices on trades executed to fill customer orders to the detriment of customers and to the benefit of other COMEX members trading for their personal accounts. Such execution of customer orders by a means other than open outcry is fraud.<sup>17</sup> By his actions, Murphy removed his customers' orders from the competitive marketplace and forced customers to accept results selected by Murphy.<sup>18</sup> The customers were thereby deprived of the competitive process and unwittingly purchased gold options contracts at higher prices or sold them at lower prices because of Murphy's intentional misconduct. By noncompetitively changing prices on trades executed for customers, Murphy engaged in fraud in violation of Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations.

## C. Aiding and Abetting Liability for Fraudulent Price Changes

Murphy willfully aided and abetted other's fraudulent price changes. To establish aiding and abetting liability, the Division must establish that:

(1) the Act was violated (the case law often refers to the violation as the "unlawful venture" that the alleged aider and abettor knowingly joins), (2) the named respondent had knowledge of the wrongdoing underlying the violation, and (3) the named respondent intentionally assisted the primary wrongdoer.<sup>19</sup>

Murphy, while trading for his own account, knowingly participated in the unlawful venture as something that he wished to bring about.<sup>20</sup> In one instance identified by the Division, Murphy and the opposite member originally recorded the trade on their trading cards, and the member recorded the fill on the order. Thereafter, both traders changed the execution price to the benefit of the personal account of Murphy and to the detriment of the customer. Therefore, the broker trading opposite Murphy who handled the customer order on which the price was changed aided and abetted the price change in violation of Section 4c(b) of the Act and Section 33.10(a) and (c) of the Regulations.

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<sup>17</sup> See *In re Murphy*, ¶ 22,798, at 31,351-52 (noncompetitive executions of customer orders constitute cheating and defrauding of customers in violation of Section 4b of the Act); see also *In re Julian Marks*, 22 A.D. 761, 773 (1964) (customers "entitled to have the orders executed on their merits"). See *Refco, Inc. v. Troika Inv., Ltd.*, 702 F. Supp. 684, 687 n.9 (N.D. Ill. 1988); see also *Ashman*, 979 F.2d at 478 ("Our case law makes clear that even though the customers may not be entitled to any specific price, deliberate refusal to pursue the best price the broker could obtain can constitute a scheme to defraud.").

<sup>18</sup> *Ashman*, 979 F.2d at 477.

<sup>19</sup> *In re Nikkhah*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,129, at 49,888 n.28 (CFTC May 12, 2000), citing *In re R&W Technical Services, Ltd.*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,582, at 47,746 (CFTC Mar. 16, 1999).

<sup>20</sup> *Rouso*, ¶ 27,133, at 45,309 (citing *In re Richardson Securities, Inc.*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,145, at 24,643 (CFTC Jan. 27, 1981)); see also *In re Buckwalter*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,995, at 37,686 (CFTC Jan. 25, 1991).

## **D. False Reports**

By changing prices on his trading cards, Murphy knowingly created false reports. Section 33.10(b) of the Regulations prohibits willfully creating written reports and statements that falsely represent the price at which a trade was executed.<sup>21</sup> Prices reported for noncompetitive trades violate Section 4c(b) of the Act and Section 33.10(b) of the Regulations, even if they accurately reflect the prices agreed to by the brokers.

## **2. OTHER TRADE PRACTICE VIOLATIONS**

### **A. Noncompetitive Trading**

By failing to execute his trades openly and competitively, Murphy violated Section 1.38 of the Regulations. Noncompetitive trades are generally transacted in accordance with expressed or implied agreements or understandings between the brokers and include illegal price changes. Trades can be noncompetitive even though they were executed in the pit.<sup>22</sup> By illegally changing the prices on transactions after the trades were executed in the pit, Murphy engaged in noncompetitive trading in violation of Section 1.38 of the Regulations.

### **B. Fictitious Sales**

Section 4c(a)(A) of the Act prohibits certain types of trading with regard to commodity contracts used for hedging, price discovery or trading in interstate commerce “if such transaction is...a fictitious sale.”<sup>23</sup> Fictitious sales are a “class of wrongful trading techniques.”<sup>24</sup> Generally, fictitious sales include transactions that appear to have been submitted to the open market while negating the market risk or price competition inherent in competitive trading.<sup>25</sup> The category also includes such trading schemes even when they do not create the false impression.

As discussed above, Murphy executed his customers’ orders outside of the competitive marketplace, forcing them to accept results selected by Murphy constituting “fictitious sales” prohibited by Section 4c(a)(A) of the Act.<sup>26</sup>

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<sup>21</sup> 17 C.F.R. § 33.10(b).

<sup>22</sup> *In re Buckwalter*, ¶ 24,995, at 37,683 (citing *Laiken v. U.S. Dep’t of Agric.*, 345 F.2d 784, 785 (2d Cir. 1965)).

<sup>23</sup> 7 U.S.C. § 6c(a).

<sup>24</sup> *In re Three Eight Corp.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,749 at 40,444-45 (CFTC June 16, 1993).

<sup>25</sup> *Id.* See also *In re Mayer*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,259, at 46,134 (CFTC Feb. 3, 1998), *aff’d*, *Reddy v. CFTC*, 191 F.3d 109 (2d Cir. 1999).

<sup>26</sup> *In re Glass*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,337 at 46,559 (CFTC Apr. 27, 1998), *aff’d sub nom. Guttman v. CFTC*, 197 F.3d 33 (2d Cir. 1999); *In re Gimbel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,213, at 35,003 (CFTC Apr. 14, 1988); see also *Ashman*, 979 F. 2d at 477.

### **C. Non Bona Fide Prices**

Murphy violated Section 4c(a)(B) of the Act, which makes it unlawful to confirm the execution of any commodity futures transaction "if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price."<sup>27</sup> Bona fide prices are only those prices that result from competitive trading. Murphy executed trades noncompetitively, and thus the prices that were reported on his trading cards, to his customers and to COMEX were not bona fide. Accordingly, Murphy violated Section 4c(a)(B) of the Act.

### **3. RECORDKEEPING VIOLATIONS**

Section 4g(a) of the Act and Section 1.35(d) of the Regulations are violated by a member of a contract market who fails to record required information on his trading cards or similar records. Section 1.35(d) of the Regulations specifies that members of contract markets prepare trading cards or similar records documenting their trades. Section 1.35(d) of the Regulations requires, among other things, that for each transaction executed by the member, the trading card or other record reflect: (a) the member's name or identification, (b) the date and/or time of the transaction, and (c) that unused lines on trading cards are crossed out. Murphy failed to record required trade information in violation of Section 4g(a) of the Act and Section 1.35(d) of the Regulations.

### **IV.**

### **OFFERS OF SETTLEMENT**

Murphy has submitted an Offer in which he, without admitting or denying the findings herein: (1) acknowledges service of the Complaint and the Order; (2) admits the jurisdiction of the Commission with respect to the matters set forth herein; (3) waives a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63 (1996), and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2000), relating to or arising from this action, and any claim of Double Jeopardy based upon institution of this proceeding or the entry of any order imposing a civil monetary penalty or any other relief; (4) stipulates that the record basis on which the Order may be entered shall consist solely of the Complaint, Order and findings in the Order consented to in the Offer; and (5) consents to the Commission's issuance of the Order, which makes findings as set forth below and: (a) orders Murphy to cease and desist from violating the provisions of the Act and Regulations that he has been found to have violated; (b) imposes civil monetary penalties; (c) assesses restitution; (d) suspends his registration for six months; (e) restricts his registration for a two-year period including the imposition of supervision requirements; and (f) orders Murphy to comply with his undertakings consented to in his Offer.

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<sup>27</sup> *In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993, at 37,653 (CFTC Jan. 25, 1991).

**V.**  
**FINDINGS OF VIOLATIONS**

Solely on the basis of the consent evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Murphy violated Sections 4c(a)(A) and (B), 4c(b) and 4g of the Act, 7 U.S.C. §§ 6c(a)(A) and (B), 6c(b) and 6g, and Sections 1.35(d), 1.38 and 33.10 of the Regulations, 17 C.F.R. §§ 1.35(d), 1.38 and 33.10, and aided and abetted violations of Section 4c(b) of the Act and Sections 33.10(a) and (c) of the Regulations.

**VI.**  
**ORDER**

Accordingly, it is hereby ordered that:

1. Murphy shall cease and desist from further violations of Sections 4c(a)(A) and (B), 4c(b) and 4g(a) of the Act, 7 U.S.C. §§ 6c(a)(A) and (B), 4c(b) and 6g(a), and Sections 1.35(d), 1.38 and 33.10 of the Regulations, 17 C.F.R. §§ 1.35(d), 1.38 and 33.10.
2. Murphy shall pay a civil monetary penalty in the amount of \$30,000, the first \$5,000 of which, is due within ten days of the signing of the Order. The balance of the civil monetary penalty, twenty-five thousand dollars (\$25,000), will be made by an annual civil monetary payment ("Annual CMP Payment") as directed by a monitor designated by the Commission (the "Monitor") on or before July 31 of each calendar year, starting in calendar year 2002 and continuing for ten years (or until the civil monetary penalty is paid in full, if that happens first);
3. Murphy shall pay restitution in the amount of \$18,750 within ten (10) days of the date of the Order to the Monitor;<sup>28</sup>
4. Murphy's registration as a floor broker will be suspended for a period of six months beginning on the third Monday after the entry of the Commission Order accepting this Offer (the "Suspension Date");
5. Murphy is prohibited for a period of six months beginning on the Suspension Date, from trading on or subject to the rules of any contract market, and all contract markets shall refuse Murphy trading privileges thereon; provided, however, Murphy is permitted to trade off the floor of any contract market for his own account beginning three months after the Suspension Date, with such orders being executed only by other duly authorized persons;
6. Murphy is prohibited for a period of twelve months, beginning six months after the Suspension Date (the "Initial Twelve-Month Period"), from acting as a dual trader on or subject to the rules of any contract market;

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<sup>28</sup> Murphy will deposit the restitution into an account with the Monitor, and the Monitor will distribute the specific amounts owed to each customer as determined by the Division.

7. For a period of twenty-four months, beginning six months after the Suspension Date:
  - a. Murphy may not act as a floor broker or floor trader pursuant to Sections 4e and 4f of the Act, 7 U.S.C. §§ 6e and 6f, and as defined under Section 1.3(x) of the Regulations, 17 C.F.R. §1.3(x), unless his activities as a floor broker or floor trader are subject to a Supplemental Sponsor Certification Statement (“Certification Statement”), in either Form A or Form B, as applicable, executed and submitted to the Commission by a qualified sponsor (“Sponsor”), as defined in subparagraph b. below, and in accordance with Section 3.60(b)(2) of the Regulations, 17 C.F.R. §3.60(b)(2). Immediately upon the Sponsor’s ceasing to act as Murphy’s Sponsor, Murphy shall stop acting as a floor broker or floor trader, until he once again obtains a Certification Statement in the applicable form, executed and submitted to the Commission by a qualified sponsor, as defined below;
  - b. For the Initial Twelve-Month Period, a “qualified sponsor” shall be an officer of the floor trader’s clearing member who has executed Form A, if such officer is a registrant or a principal of a registrant, unless Murphy ceases executing orders for his own account and commences executing orders for customers, as provided by subparagraph c. below During the Initial Twelve Month Period, if Murphy is executing orders for customers, and after the Initial Twelve-Month Period, a “qualified sponsor” shall be Murphy’s employer or, if he has no employer, another floor broker who has executed Form B;
  - c. At the commencement of the Initial Twelve Month Period, Murphy may only trade for his own account as a floor trader as defined in Section 4e of the Act, 7 U.S.C. § 6e, and as defined under Sections 1.3(x) of the Regulations, 17 C.F.R. § 1.3(x), in accordance with Section 3.60(b)(2) of the Regulations, 17 C.F.R. §3.60(b)(2); provided however, that if during the Initial Twelve-Month Period, Murphy ceases trading for his own account, he may then execute orders for customers pursuant to the terms set forth below. Prior to commencing to execute trades for customers, each time he commences to do so after trading for his own account, Murphy shall (1) provide at least two weeks’ advance written notice to the Director of the Commission’s Division of Enforcement and to his current Sponsor; (2) provide the required notice of termination of his current sponsorship, executed by the Sponsor, and submit a new Certification Statement Form B executed by a qualified sponsor; and (3) notify his futures commission merchant (“FCM”) in writing that he has ceased trading for his own account and provide a copy of that notice to his new Sponsor. To resume trading for his own account during the Initial Twelve-Month Period, Murphy shall cease trading directly or indirectly for customers and shall (1) provide at least two weeks advance written

notice to the Director of the Commission's Division of Enforcement and to his current Sponsor; (2) provide the required notice of termination of his current sponsorship, executed by the Sponsor, and submit a new Certification Statement Form A executed by a qualified sponsor; and (3) provide signed and dated letters or statements from his customers to his new Sponsor evidencing that Murphy has ceased executing trades for their accounts;

- d. If, during the Initial Twelve-Month Period, Murphy is trading for his own account, Murphy shall clear all trades through the FCM at which his Sponsor is an officer;
- e. Within three business days of opening an account for a customer or accepting an order for a new customer, Murphy shall provide all of his customers, to the extent he is executing orders for customers, a statement notifying them of his restricted registration (the "notification statement"). Respondent shall also provide a copy of each of the signed notification statements to the Sponsor within five business days from the date on which it is signed and the Sponsor will periodically verify that the Sponsor has received all such notification statements by reviewing Respondent's trading cards, records of customer accounts and customer orders, and any other necessary trading and customer-related records;
- f. Murphy shall not serve on any disciplinary committee, arbitration panel, oversight panel or governing board of any self-regulatory organization ("SRO") registered or subject to regulation by the Commission;
- g. Murphy shall not directly or indirectly act as a principal, partner, officer, or branch office manager of any entity registered or required to be registered with the Commission; Murphy shall not directly or indirectly act in any supervisory capacity over anyone registered or required to be registered with the Commission;
- h. The Certification Statement will become part of Murphy's registration file, and shall be a public document and may be made available to any SRO and state and federal governmental entities;
- i. Murphy shall send written notification to the Membership Department of all exchanges where he has floor trading privileges that his registration is subject to conditions. Such written notification shall include a copy of the Order and the Certification Statement.
- j. If the Commission, NFA or any other SRO or a law enforcement agency or regulatory agency institutes a proceeding charging Murphy with violation of the Act, the Regulations, the rules or requirements of NFA or any other SRO, the terms of the Order or a disciplinary offense as defined in Section 1.63(a)(6) of the Regulations, Murphy shall notify Sponsor, and

Murphy and Sponsor shall immediately notify the Commission and NFA in writing of such action;

- k. Murphy's registration shall be automatically suspended if, while registered with the Commission and subject to the Certification Statement, he is charged with a disciplinary offense as defined in Section 1.63(a)(6) of the Regulations, 17 C.F.R. § 1.63(a)(6), except that, as to offenses defined in Section 1.63(a)(6)(i)(C) of the Regulations, suspension shall occur if fines aggregating \$5,000 or more are imposed during the period of these restrictions rather than during a calendar year;
  - l. If Murphy's registration is automatically suspended, the period of suspension shall terminate six months after the date of the suspension, unless the Commission files within that period a Notice of Intent to Suspend, Revoke or Restrict Registration pursuant to Section 3.60(a) of the Regulations, 17 C.F.R. § 3.60(a), pursuant to Section 6c or 6(c) of the Act, 7 U.S.C. §§ 13a-1 or 9. If such Notice or Complaint is filed within the six-month period, his registration shall be suspended, until a final order is entered resolving all issues arising under such Notice or Complaint;
  - m. Within five days after Sponsor notifies Murphy in writing that he is terminating his sponsorship of that Respondent for any reason, Murphy and Sponsor will each file with the Director of the Commission's Division of Trading and Markets, the NFA and the Membership Department of the exchange where Respondent has trading privileges, a written notice of such termination. Such written notice shall fully set out the reasons that caused the Sponsor to terminate the supervision; and
  - n. Murphy acknowledges that failure to comply with the Order shall constitute a violation of the Order and may subject him to administrative or injunctive proceedings, pursuant to the Act; and
8. Murphy is directed to comply with his undertakings:
- a. neither Murphy nor any of his agents or employees shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order, or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision affects Murphy's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Murphy shall take all steps necessary to ensure that his agents or employees, if any, understand and comply with this undertaking.
  - b. to cooperate fully with the Commission's Division of Enforcement in this proceeding and any investigation, civil litigation and administrative proceeding related to this proceeding by, among other things: (i)

responding promptly, completely, and truthfully to any inquiries or requests for information; (ii) providing authentication of documents; (iii) testifying completely and truthfully; and (iv) not asserting privileges under the Fifth Amendment of the United States Constitution.

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

By the Commission

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Jean A. Webb  
Secretary to the Commission  
Commodity Futures Trading  
Commission

Dated: April 30, 2001