

this Order and consents to the use of the findings in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

III.

The Commission finds the following:

A. SUMMARY

During the spring and summer of 1997 and 1998, Lipton, a registered floor broker, through the acts of his clerk, received orders for customers without immediately obtaining and recording account identification on the floor order tickets. Accordingly, Lipton violated Section 4g of the Act and Regulation 1.35(a-1)(2).

B. SETTLING RESPONDENT

Daniel Lipton, who resides at 31 Barnes Street, Long Beach , New York 11561, has been registered with the Commission as a floor broker with the Coffee Sugar and Cocoa Exchange, Inc. ("CSCE") from March 1993 until the present. Lipton also has been a member of the New York Cotton Exchange since August 14, 1997, and a member of the New York Futures Exchange since January 29, 1998.

C. FACTS

During 1997 and 1998, Lipton, as a floor broker, received and executed orders for customers on behalf of an introducing broker ("IB") for coffee futures contracts on the CSCE.

During the spring and summer of 1997 and 1998, Lipton's clerk prepared floor order tickets ("tickets") for customer orders entered by the IB and recorded on them that the orders were placed by the IB. The clerk failed to record the specific customer account identification on these tickets and did not receive this account identification from the IB until after the orders had been executed.

D. LEGAL DISCUSSION

Recordkeeping Violations

Section 4g of the Act requires that floor brokers, among others, make and produce records relating to their customers' transactions and positions as required by the

¹ Lipton does not consent to the use of his Offer of 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. Lipton also does not consent to the use of his Offer of 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.

Commission. Regulation 1.35(a-1)(2) requires floor brokers to prepare a written record of a customer order immediately upon receipt, including the customer account identification and order number.² These recordkeeping duties impose a direct regulatory obligation on a floor broker.

Lipton, through his clerk, accepted customer orders from the IB without obtaining and recording account identification on the floor order tickets for those orders. Accordingly, Lipton violated Section 4g of the Act and Regulation 1.35(a-1)(2).

IV.

OFFER OF SETTLEMENT

Lipton has submitted an Offer of Settlement in which he neither admits nor denies the allegations in the Complaint or the findings in the Order. Subject to the foregoing, Lipton acknowledges service of the Complaint and of this Order and admits the jurisdiction of the Commission with respect to the matters set forth in the Complaint and the Order. Lipton waives: (1) a hearing and all post-hearing procedures; (2) judicial review by any court; (3) any objection to the staff's participation in the Commission's consideration of the Offer; (4) 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, and Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.*, relating to or arising from this proceeding; and (5) any claim 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.

Lipton stipulates that the record basis on which this Order is entered consists solely of the Complaint and the Order and the findings to which he has consented in his Offer, which are incorporated in this Order. Lipton consents to the Commission's entry of this Order, which makes findings as set forth herein, and orders that Lipton:

- 1) cease and desist from violating the provisions of the Act and the Regulations he is found to have violated;
- 2) pay a civil monetary penalty of \$7,500;
- 3) be subject to a restricted registration as a floor broker for two years as set forth in the Offer and Order; and
- 4) comply with the undertakings as set forth in the Offer and this Order.

² Failing to place account identification on order tickets immediately upon receipt of orders "provide[s] an opportunity to direct profitable fills to favored accounts. *In re GNP Commodities, Inc.* [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,214 (CFTC Aug. 11, 1992), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993).

V.

FINDINGS OF VIOLATIONS

Solely on the basis of Lipton's consent evidenced by the Offer, without admitting or denying any of the allegations in the Complaint or the findings in this Order, and prior to any adjudication on the merits, the Commission finds that Lipton violated Section 4g of the Act and Regulation 1.35(a-1)(2).

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Lipton shall cease and desist from violating Section 4g of the Act and Regulation 1.35(a-1)(2);
- B. Lipton shall pay a civil monetary penalty in the amount of seven thousand five hundred dollars (\$7,500) within ten (10) days of the date of this Order. Lipton shall make such payment by electronic funds transferred to the account of the Commission at the United States Treasury or by U.S. postal money order, certified check, bank cashier's check or bank money order made payable to the Commodity Futures Trading Commission, and addressed to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, D.C. 20581 under cover of a letter that identifies his name and the name and docket number of the proceeding. A copy of the cover letter and the form of payment shall be simultaneously transmitted to Director, Division of Enforcement, Commodity Futures Trading Commission at the following address: 1155 21st Street, NW, Washington D.C. 20581 and to Charles J. Sgro, Regional Counsel, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, New York, N.Y. 10005. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2) (1994), if Lipton fails to pay the full amount of this penalty within fifteen (15) days of the due date, he shall be automatically prohibited from trading on all contract markets and, if he is registered with the Commission, such registration shall be automatically suspended until he shows to the satisfaction of the Commission that payment of the full amount of the penalty imposed against him with interest thereon to the date of payment has been made;
- C. Lipton's registration as a floor broker shall be restricted, as follows, commencing on the date of entry of the Order and continuing for two years:
 - 1. Lipton shall not act as a floor broker or floor trader pursuant to Sections 4e and 4f of the Act, 7 U.S.C. §§6(e) and 6(f) (2001), and as defined under

Sections 1a(16) and (17) of the Act, unless his activities as a floor broker or floor trader are subject to a Supplemental Sponsor Certification Statement (“Certification Statement”), in the form attached hereto by a qualified sponsor. Immediately upon Lipton’s sponsor (“Sponsor”) ceasing to act as Sponsor, Lipton shall stop acting as a floor broker or floor trader until he once again obtains a Certification Statement in the form attached hereto, executed and submitted to the Commission;

2. Lipton shall not serve on any disciplinary committee, arbitration panel, oversight panel or governing board of any self-regulatory organization subject to regulation by the Commission for two years from the date the Order is entered; and

D. Lipton shall comply with his undertakings, as set forth in his Offer:

1. Not to take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding in this Order, or creating, or tending to create, the impression that this Complaint or Order is without a factual basis; provided, however, that nothing in this provision affects his: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party; and
2. Lipton agrees to cooperate fully with the Commission and its staff in this proceeding and in any related inquiry, investigation or legal proceeding by, among other things: 1) responding promptly, completely, and truthfully to any inquiries or requests for information; 2) authenticating documents; 3) testifying completely and truthfully; and 4) 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.

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

Dated: October 25, 2002