

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:

Christopher Chapman,

Respondent.

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) **CFTC Docket No:** 03-08
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) **ORDER INSTITUTING PROCEEDINGS**
) **PURSUANT TO SECTIONS 6(c) and 6(d)**
) **OF THE COMMODITY EXCHANGE**
) **ACT, AS AMENDED, MAKING**
) **FINDINGS AND IMPOSING REMEDIAL**
) **SANCTIONS**
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I.

The Commodity Futures Trading Commission (the "Commission") has reason to believe that Christopher Chapman ("Chapman") has violated Sections 4b(a)(2)(C)(i) and (iii) and 4c(a)(2)(A)(ii) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 6b and 6c. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Chapman engaged in the violations set forth herein, and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Chapman has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Without admitting or denying the findings of fact in this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, As Amended, Making Findings and Imposing Remedial Sanctions ("Order"), Chapman acknowledges service of this Order. Chapman 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

¹ Chapman does not consent to the use of the Offer or this Order, or the findings to which he has consented in the 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. He does not consent to the use of the Offer or this Order, or the findings to which he has consented in the Offer, by any other person or entity in this or any other proceeding. The findings to which Chapman has consented in the Offer, as contained in this Order, are not binding on any other person or entity named as a respondent or defendant in this or in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

On certain dates between December 2001 and March 2002 (“the relevant time period”), Chapman, a gas trader employed by PG&E Energy Trading-Gas Corporation (“PG&E”), engaged in a fraudulent trading scheme involving natural gas futures contracts traded on the New York Mercantile Exchange’s (“NYMEX”) American Computerized Commodity Exchange System and Services trading platform (“ACCESS”). During the relevant time period, Chapman directed losing trades to PG&E’s proprietary account and profitable trades to another account he opened and controlled at a non-clearing futures commission merchant (“FCM”). Through this scheme, Chapman evaded the competition of the open market and caused fictitious trades to be entered on behalf of both of these accounts. This scheme resulted in the account that Chapman controlled, wrongfully profiting over \$700,000 and PG&E’s account losing a similar amount of money.

B. RESPONDENT

Christopher Chapman resides in East Brunswick, New Jersey. He has never been registered in any capacity with the Commission.

C. FACTS

During the relevant time period, Chapman was employed as a gas trader at PG&E and had discretion to enter orders on behalf of PG&E’s proprietary account for natural gas futures contracts traded on ACCESS. In September 2001, Chapman also opened up an account, which he controlled, at a non-clearing FCM to trade natural gas futures contracts on ACCESS.

Chapman fraudulently entered over 4,000 natural gas futures contracts for the 2003 calendar year on behalf of the account he controlled and PG&E on a dozen separate dates. Through this scheme, Chapman entered identical buy and sell limit orders whereby one of those orders was entered on behalf of the account he controlled and the other on behalf of PG&E. Subsequently, Chapman entered another identical buy and sell limit order to offset the first set of trades, resulting in two roundturn trades, one profitable and the other unprofitable. Due to the illiquidity of the market for the 2003 calendar year contracts, Chapman was able to control both the buy and sell positions and prices for both the initial and offsetting trades resulting in the account he controlled profiting over \$700,000 and the PG&E account suffering similar losses.

D. LEGAL DISCUSSION

1. Chapman Violated Sections 4b(a)(2)(C)(i) and (iii) of the Act

To establish violations of Sections 4b(a)(2)(C)(i) and (iii) of the Act requires a showing that a person:

- (1) (a) cheated or defrauded or attempted to cheat or defraud another person, and

(b) willfully deceived or attempted to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person
- (2) in connection with any order to make or the making of a contract of sale of a commodity for future delivery made or to be made for or on behalf of any other person.²

Section 4b(a) of the Act prohibits fraudulent commodity futures transactions made for or on behalf of other persons. In particular, an employee who defrauds his employer in connection with a commodity transaction on behalf of the employer can be held liable for violating the anti-fraud provisions of Section 4b of the Act.³ Chapman defrauded his employer, PG&E, in connection with natural gas futures contracts traded on ACCESS by entering orders pursuant to this scheme on behalf of PG&E and the account he controlled.

Liability under Section 4b(a) of the Act also requires proof of scienter, i.e., proof that Chapman committed the alleged wrongful actions “intentionally or with reckless disregard for [his] duties” under the Act.⁴ Chapman’s intent to defraud has been established by both his statements to the Commission and by his conduct. Chapman has admitted to the Commission that he was able to control the profits and losses in both the PG&E account and the account he controlled through this trading scheme and that his conduct was wrongful. Trading records also establish that Chapman entered identical buy and sell natural gas contracts for the 2003 calendar year on behalf of the account he controlled and PG&E and that the profits totaling over \$700,000 were directed to the account he controlled and the corresponding losses were directed to PG&E’s account.

Through this scheme, Chapman cheated, defrauded and deceived PG&E by purposefully entering orders for execution on behalf of PG&E that were designed to lose in violation of Section 4b(a) of the Act.

² 7 U.S.C. § 6b(a)(i) and (iii).

³ See *Merrill Lynch Futures, Inc. v. Kelly*, 585 F. Supp. 1245, 1251-1253 (S.D.N.Y. 1984) (a clerk at Merrill Lynch Futures, Inc. (“ML”) who participated in a scheme to defraud ML by accepting certain losing out trades in ML’s error account was properly charged with violating section 4b of the Act).

⁴ *Hammond v. Smith Barney, Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659, n.21 (CFTC March 1, 1990); *CFTC v. Savage*, 611 F.2d 270, 283 (9th Cir. 1979) (finding of scienter supported by proof of recklessness).

2. Chapman Violated Section 4c(a)(2)(A)(ii) of the Act

Section 4c(a)(2)(A)(ii) of the Act provides in pertinent part that “it shall be unlawful for any person to offer to enter into, or confirm the execution of a transaction described in paragraph (2) involving the purchase or sale of any commodity for future delivery ... if the transaction is used or may be used to (C) deliver any such commodity sold, shipped or received in interstate commerce for the execution of the transaction.” Paragraph 2 of Section 4c provides in pertinent part that “A transaction referred to in paragraph (1) is a transaction that is, is of the character of, or is commonly known to the trade as, a fictitious sale.

Fictitious sales have been defined as transactions that appear to have been submitted to the open market while eliminating the market risk or price competition inherent in competitive trading.⁵ Fictitious sales also include “trading schemes that evade the competition of the open market.”⁶

Chapman engaged in a trading scheme that was designed to eliminate all market risk. By placing identical buy and sell limit orders for the 2003 calendar year contracts on behalf of the account he controlled and PG&E on ACCESS, Chapman took advantage of an illiquid market and allowed prices to be set that ensured profits in the account he controlled and equivalent losses in the PG&E account. Chapman structured the trades to avoid taking the risk that legitimate trading entails, and were, accordingly, fictitious sales, in violation of Section 4c(a)(2)(A)(ii) of the Act.

IV.
OFFER OF SETTLEMENT

Chapman submitted an Offer in which he neither admits nor denies the findings in the Order. Subject to the foregoing, Chapman: acknowledges service of this Order and admits the jurisdiction of the Commission with respect to the matters set forth in this Order; waives: (1) the service and filing of a Complaint and Notice of Hearing; (2) a hearing and all post-hearing procedures; (3) judicial review by any court; (4) any objection to the staff's participation in the Commission's consideration of the Offers; (5) 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 action; and (6) 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.

Chapman stipulates that the record basis on which this Order is entered consists of the Order and the findings to which he has consented in the Offer, which are incorporated in this Order. Chapman consents to the Commission's issuance of this Order, which makes findings as set forth

⁵ *In re Three Eight Corp.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,749 at 40,444-45 (CFTC June 16, 1993).

⁶ *In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,742-43 (CFTC Dec. 10, 1997).

herein, and orders that Chapman (1) cease and desist from violating the provisions of the Act and the Regulations he is found to have violated; (2) be permanently prohibited from trading on or subject to the rules of any registered entity, as that term is defined by Section 1(a)(29) of the Act and all registered entities shall refuse Chapman privileges, beginning on the third Monday after the date of this Order; (3) pay a civil monetary penalty in an amount of Two Hundred Forty Thousand Dollars (\$240,000) in accordance with a payment plan; and (4) comply with his undertakings as set forth in the Offer and incorporated in this Order.

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 Chapman violated Sections 4b(a)(2)(C)(i) and (iii) and 4c(a)(2)(A)(ii) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 6b and 6c.

VI.
ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Chapman shall cease and desist from violating Sections 4b(a)(2)(C)(i) and (iii) and 4c(a)(2)(A)(ii) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 6b and 6c;
- B. Chapman shall be permanently prohibited from trading on or subject to the rules of any registered entity, as that term is defined by Section 1a(29) of the Act, and all registered entities shall refuse Chapman privileges, beginning on the third Monday after the date of this Order;
- C. Chapman shall pay a civil monetary penalty in the amount of Two Hundred Forty Thousand Dollars (\$240,000) subject to a payment plan. Chapman will pay an annual civil monetary payment ("Annual CMP Payment") as directed by a monitor designated by the Commission (the "Monitor")⁷ on or before July 31 of each calendar year, starting in calendar year 2004 and continuing for ten years (or until the CMP is paid in full, if that happens first). The amount of Chapman's Annual CMP Payment shall consist of a portion of: (1) the adjusted gross income (as defined by the Internal Revenue Code) earned or received by Chapman during

⁷ Chapman agrees that the National Futures Association is hereby designated as the Monitor for a period of eleven years commencing from the date of entry of the Order. Notice to the Monitor shall be made to Daniel A. Driscoll, Esq. Executive Vice President, and Compliance Officer, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, IL 60606. For ten years, based on the information contained in Chapman's sworn financial statements, tax returns and other financial statements and records provided to the Monitor, the Monitor shall calculate the total amount of civil monetary penalty to be paid by Chapman. On or before June 30 of each year and starting in calendar year 2004 and concluding in calendar year 2013, the Monitor shall also send written notice to Chapman with instructions to pay by no later than July 31 of the following year the amount of CMP to be paid in accordance with the payment instructions provided above.

the course of the preceding calendar year; plus (2) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets received by Chapman during the course of the preceding calendar year. The Annual Restitution or CMP Payment will be determined as follows:

Where Adjusted Gross Income plus Net Cash Receipts Total:	Percent of Total to be paid by Chapman is:
Up to \$25,000	0%
\$25,000 - \$50,000	20% of the amount above \$25,000
\$50,000- \$100,000	20% of the amount between \$25,000 and \$50,000 plus 30% of the amount between \$50,000 and \$100,000
Above-\$100,000	20% of the amount between \$25,000 and \$50,000 plus 30% of the amount between \$50,000 and \$100,000 plus 40% of the amount over \$100,000

1. Chapman shall make all Annual CMP Payments by electronic funds transfer, 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, or her successor, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581 under cover of a letter that identifies Chapman and the name and docket number of the proceeding. Copies of the cover letter and the form of payment shall be simultaneously transmitted to Gregory G. Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington, D.C. 20581 and to Stephen J. Obie, Regional Counsel, Commodity Futures Trading Commission, Division of Enforcement, Eastern Regional Office, 140 Broadway, New York, N.Y. 10005;
2. In the event that Chapman does not make payments as directed in paragraphs C and C(1), above, the Commission may bring a proceeding or an action to enforce compliance with this Order and at its option may seek payment of the unpaid CMP payment(s) or immediate payment of the entire amount of the civil monetary penalty. The only issue Chapman may raise in defense of such enforcement action is whether Chapman has made the Annual CMP Payment(s) as directed by the Monitor. Any action or proceeding brought by the Commission compelling payment of the Annual CMP Payments, due and owing pursuant to paragraphs C and C(1)

above, or any portion thereof, or any acceptance by the Commission of partial payment of the Annual CMP Payments made by Chapman, shall not be deemed a waiver of Chapman's obligation to make further payments pursuant to the payment plan, or a waiver of the Commission's right to seek to compel payment of the remaining balance of the civil monetary penalty assessed against Chapman;

3. The Commission notes that an order requiring immediate full payment of the civil monetary penalty against Chapman would be appropriate in this case, but does not impose it based upon Chapman's financial condition. Chapman acknowledges that the Commission's acceptance of the Offer is conditioned upon the accuracy and completeness of the sworn Financial Statement Chapman has provided regarding his financial condition. Chapman consents that if at any time following entry of this Order the Division of Enforcement ("Division") of the Commission obtains information indicating that Chapman's representations concerning his financial condition were fraudulent, misleading, inaccurate or incomplete in any material respect at the time they were made, the Division may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Chapman provided accurate and complete financial information at the time such representations were made; (2) require immediate payment of the full amount of the civil monetary penalty required in paragraphs C and C(1) above; and (3) seek any additional remedies that the Commission would be authorized to impose in this proceeding if Chapman's Offer had not been accepted. No other issues shall be considered in connection with this petition other than whether the financial information provided by Chapman was fraudulent, misleading, inaccurate or incomplete in any material respect, and whether any additional remedies should be imposed. Chapman may not, by way of defense to any such petition concerning the financial information provided by him, contest the validity of or the findings in this Order, assert that payment of a civil monetary penalty should not be ordered, or contest the amount of the civil monetary penalty to be paid. If in such proceeding the Division petitions for and the Commission orders immediate payment of less than the full amount of the civil monetary penalty, such petition shall not be deemed a waiver of Chapman's obligation to pay the remaining balance of the civil monetary penalty assessed against him, pursuant to the payment plan; and

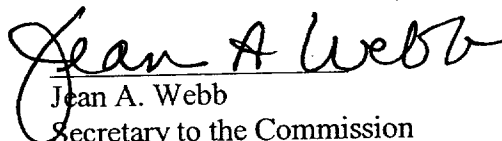
- D. Chapman shall comply with the following undertakings as set forth in his Offer:
1. Chapman shall provide his sworn financial statement, CFTC Form 12, to the Monitor on June 30 and December 31 of each calendar year, starting on June 30, 2003, and continuing through and including December 31, 2013. The financial statement shall provide:
 - a. a true and complete itemization of all of Chapman's rights, title and interest in (or claimed in) any asset, wherever, however and by whomever held;
 - b. an itemization, description and explanation of all transfers of assets with a value of \$1,000 or more made by or on behalf of Chapman over the preceding six-month interval; and
 - c. a detailed description of the source and amount of all of Chapman's income or earnings, however generated.
 2. Chapman shall also provide the Monitor with complete copies of his signed, individual or joint federal income tax return, including all schedules and attachments thereto (e.g., IRS Forms W-2 and Forms 1099), as well as any filings he is required to submit to any state tax or revenue authority, on or before June 30 of each calendar year or as soon thereafter as the same are filed. In the event Chapman moves his residence at any time, he shall provide written notice of his new address to the Monitor and the Commission within ten (10) calendar days thereof. If, during the same time period, Chapman elects to file a joint tax return, he shall provide all documents called for by this paragraph, including the signed and filed joint tax return, plus a draft individual tax return prepared on IRS Form 1040 containing a certification by a licensed certified public accountant that the "Income" section (currently lines 7-22 of Form 1040) truly, accurately and completely reflects all of Chapman's income, that the "Adjusted Gross Income" section truly, accurately and completely identifies all deductions that Chapman has a right to claim, and that the deductions contained in the "Adjusted Gross Income" section are equal to or less than 50% or the deductions that Chapman is entitled to claim on the joint tax return; provided however that Chapman may claim 100% of the deductions contained in the "Adjusted Gross Income" section that are solely his. Such individual tax return shall include all schedules and attachments thereto (e.g., IRS Forms W-2 and Forms 1099), as well as any filing required to be submitted to any state tax or revenue authority;
 3. Chapman shall never apply for registration or seek exemption from registration with the Commission in any capacity and shall never engage in activity requiring registration or exemption from registration with the Commission; and

4. Chapman will not take any action or make any public statements denying, directly or indirectly, any finding 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 Chapman's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party.

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

By the Commission.

Dated: 3/25, 2003



Jean A. Webb

Secretary to the Commission

Commodity Futures Trading Commission