

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:

Ronald M. Schiller, et al.,

Respondents.

CFTC Docket No: 96-4  
Hon. Bruce C. Levine  
Administrative Law Judge

**ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS**

On April 18, 1996, the Commodity Futures Trading Commission ("Commission") issued a Complaint and Notice of Hearing against Ronald Schiller, Eugene Chesrow and Emmett Whealan.<sup>1</sup> The Complaint charges, *inter alia*, that Schiller and Chesrow violated Sections 4b(a)(i), 4b(a)(iv) and 4g(a) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 6b(a)(i), 6b(a)(iv), and 6g(a) (1994), and Commission Regulations 1.35(d) and 1.38(a), 17 C.F.R. §§ 1.35(d) and 1.38(a) (1995) and that Chesrow violated Section 4c(a)(A), 7 U.S.C. § 6c(a)(A) (1994).

**I.**

Schiller and Chesrow have submitted Offers of Settlement ("Offers"), which the Commission has determined to accept. Without admitting or denying the findings herein, and prior to any adjudication on the merits, Schiller and Chesrow acknowledge service of this Order Making Findings and Imposing Remedial Sanctions as to Respondents Ronald M. Schiller and Eugene J. Chesrow ("Order"). Schiller and Chesrow consent 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>2</sup>

<sup>1</sup> The charges against Whealan were disposed of by virtue of the Commission Order Making Findings and Imposing Remedial Sanctions as to Emmett J. Whealan entered on November 18, 1999.

<sup>2</sup> Schiller and Chesrow do not consent to the use of the Offers, the findings consented to in the Offers or this Order as the sole basis for any other proceeding brought by the Commission. Nor do they consent to the use of the Offers, the findings consented to in the Offers or this Order by any other party in any other proceeding. The findings consented to in the Offers or contained in this Order are not binding on any other person or entity named as a defendant or respondent in this or in any other proceeding.

## II.

The Commission finds the following:

### A. RESPONDENTS

Ronald M. Schiller, who currently resides in Highland Park, Illinois, is now, and was at all relevant times, registered with the Commission as a floor broker. Schiller has been a member of the Chicago Mercantile Exchange ("CME") since 1967.

Eugene J. Chesrow, who currently resides in Chicago, Illinois, was registered with the Commission as a floor broker at all relevant times. Chesrow has been a member of the CME since 1967.

### B. FACTS

Between 1991 and 1993, Schiller was a floor broker executing orders on behalf of customers in the third month of the live cattle futures contract traded on the floor of the CME. Schiller's clients included nearly every clearing member with third month customer orders. Schiller also filled third month orders on behalf of other CME members. In addition to filling third month orders, Schiller also traded in third month contracts for his personal trading account and "error account."

During the relevant time period, Schiller engaged in a variety of trading practices when filling customer orders and executing trades for his own account that cheated and defrauded customers or otherwise deprived them of the competitive execution of their orders. Among other things Schiller: (1) cheated his customers by appropriating trades for his personal account that he originally executed on behalf of customer orders, allocating trades from his personal account to customer orders, and changing prices on fills given to orders; (2) indirectly "bucketed" customer orders; (3) indirectly filled opposing buy and sell customer orders by "offset"; and (4) engaged in various other forms of noncompetitive trading.

In at least twenty instances, Schiller appropriated trades to which his customers were entitled. In general, he did this by executing a trade on behalf of a customer order but delaying recording any transactions on the face of the order. If a market move made the trade profitable relative to the current market price, Schiller recorded the trade for his personal account rather than for the customer order and attempted to refill the order at the then prevailing (and less favorable) price. If Schiller was unable to refill the customer order, he returned those orders as unable, and thereby deprived those customers of their right to the position in the market they sought. In other situations, Schiller altered the quantity of a trade he had recorded on the order to a smaller number of contracts, recorded the difference between the original and reduced quantities as a trade for his personal account, and attempted to refill the portion of the order he appropriated. These practices allowed Schiller to make profitable trades for his own account without, or with reduced exposure to, market risk, or to limit his loss on pre-existing open positions in his personal account.

In at least forty-seven instances, Schiller indirectly bucketed or traded opposite his customers' orders. Typically, Schiller did this by buying and selling the same or nearly the same quantity of the third month live cattle contract, at or about the same price, opposite an accommodating trader. One of Schiller's trades was on behalf of a customer order and the other

trade was for his personal account. Both trades of the accommodating trader were for his personal account. The accommodator typically incurred little or no profit or loss on the round-turn trades with Schiller.

In at least twelve instances, Schiller indirectly filled opposing customer orders by offset rather than through competitive execution through open outcry in the pit. Typically, Schiller bought and sold the same quantity of the third month live cattle contract, at or about the same price, opposite an accommodating trader. Both trades executed by Schiller were on behalf of customer orders. Both trades executed by the accommodating trader were for his own account. The accommodating trader normally did not acquire a net position, and therefore did not experience market risk on the trades, which are often recorded at a profit to the accommodator. Finally, in at least six trade sequences, Schiller recorded trades that he did not execute by open outcry.

During all relevant times Eugene Chesrow served as an accommodating trader for Schiller. Chesrow was a local trader trading his own account as a spread trader in all the listed live cattle futures contract months. Chesrow employed clerks to assist him in checking his transactions, to ensure that his trading cards contained required transaction information, and to keep his position count in the various contract months he traded. Chesrow had also authorized his clerks to record trades on his trading cards that he had missed or neglected to record. Chesrow generally recorded all or at least some of the trade details on his trading cards. However, most of the charged trades were recorded entirely by Chesrow's clerks. Specifically, Chesrow accommodated Schiller in bucketing customer orders in 29 trade sequences; in filling orders by offset in 10 sequences and in engaging in noncompetitive trades in 6 other trade sequences.

The evidence indicates that when Schiller approached Chesrow's clerks with matched round-turn trades he claimed to have executed with Chesrow, Chesrow's clerks either uncritically recorded what Schiller told them, on the understanding that they were authorized by Chesrow to do so, or else they received express authorization from Chesrow to record the trades opposite Schiller. When the Schiller filled customer orders opposite Chesrow at prices worse than the relevant range of prices reported in the CME's price change register, Chesrow also aided and abetted Schiller in defrauding his customers

### III.

#### Appropriated Trades

Section 4b of the Act, the general anti-fraud provision of the Act, prohibits the allocation of winning and losing trades. *In re GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,214 (CFTC August 11, 1992), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7<sup>th</sup> Cir. 1993) *citing In re Lincolnwood Commodities, Inc., of California*, [1982-1984 Transfer Binder] Comm.Fut.L.Rep. (CCH) ¶ 21,986 at 28,246 (CFTC Jan. 31, 1984). Schiller cheated and defrauded the customers' whose orders he filled by appropriating favorable trades for his personal account and allocating unfavorable trades to his customers.

## Noncompetitive Trading

Noncompetitive trading consists of the use of trading techniques which negate the risk or price competition incident to an open competitive market. *See In re Bear Stearns*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,662 (CFTC Jan. 25, 1991). The central characteristic of noncompetitive trades is the use of trading techniques that give the appearance of submitting trades to the open market while negating risk and price competition. *In re Mayer*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,259 at 46,134 (CFTC Feb. 3, 1998), *aff'd sub nom. Reddy v. CFTC*, 191 F.3d 109 (2d Cir. Sept. 3, 1999). Noncompetitive trading can take many forms, such as bucketing, offsetting, money passes, and wash sales, among others.

A broker who noncompetitively executes a customer order also violates Section 4b(a) of the Act. *In re Murphy*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,798 at 31,351 (CFTC Sept. 25, 1985). A trader who knowingly associates himself with an unlawful noncompetitive venture, participating in it as something he wishes to bring about and seeking by his actions to make it succeed, aids and abets the violation within the meaning of Section 13(a), 7 U.S.C. § 13c(a) (1994), and may be held liable for the violations as a principal. *In re Richardson Securities, Inc.*, [1980-1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,2145 at 24,646 (CFTC Jan. 21, 1981).

In noncompetitively filling his customers' orders, Schiller cheated and defrauded those customers in violation of Section 4b(a) of the Act, 7 U.S.C. § 6b(a) (1994). By knowingly facilitating Schiller's noncompetitive execution of customer orders, Chesrow aided and abetted Schiller's violations of Section 4b(a) of the Act. *In re Bear Stearns*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,665. Chesrow violated Section 4b(a)(i) of the Act, 7 U.S.C. § 6b(a)(i) (1994), by willfully aiding and abetting a broker, within the meaning of Section 13(a), 7 U.S.C. § 13c(a) (1994), in cheating and defrauding or attempting to cheat or defraud others by entering into noncompetitive trades with a floor broker involving customer orders.

In trading noncompetitively, Schiller and Chesrow also violated Regulation 1.38(a), 17 C.F.R. § 1.38(a) (1995), in that they executed purchases and sales of cattle futures contracts in a manner other than openly and competitively by open outcry in the trading pit during trading hours.

## Indirect Bucketing and Accommodation Trading

The bucketing of a customer order includes directly or indirectly taking the opposite side of a customer's order into a broker's own account or into an account in which a broker has an interest, without open and competitive execution of the order on an exchange. *In re Mayer*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,259 at 46,120, n.12 and 46,137.

In the typical indirect bucket, the broker executes a customer order opposite another trader (the accommodator) and then executes an opposite transaction with the same trader/accommodator for the broker's personal account. Thus, the accommodator buys and sells the same quantity of the same contract month, at or about the same price and therefore establishes no net position and incurs no market risk. The accommodator may make money on the trade, which provides an obvious motive to engage in the trade. However, even when the accommodator breaks-even on a trade or the trade results in a loss, the concept of "recognition"

provides an incentive for the trader to accommodate the broker.<sup>3</sup> Accommodation trading, however, is improper regardless of the motive.

A broker who buckets customer orders violates Section 4b(a)(iv) of the Act. *See In re Reddy*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,271 at 46,203 (CFTC Feb. 4, 1998), *aff'd sub nom. Reddy v. CFTC*, 191 F.3d 109 (2d Cir. Sept. 3, 1999). A trader who knowingly accommodates the broker's bucketing of customer orders aids and abets the broker's violation within the meaning of § 13(a) and may be held liable for the violations as a principal. *In re Murphy*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,798 at 31,352 (CFTC Sept. 25, 1985).

Between November 1991 and June 1993, Schiller violated Section 4b(a)(iv) of the Act by indirectly bucketing his customers' orders. During that same time period, Chesrow violated Section 4b(a)(iv) of the Act, 7 U.S.C. § 6b(a)(iv) (1994), by willfully aiding and abetting Schiller, within the meaning of Section 13(a), 7 U.S.C. § 13c(a) (1994), in indirectly bucketing customer orders by entering into noncompetitive trades with Schiller involving customer orders.

Chesrow's conduct also violated Section 4c(a)(A) of the Act, 7 U.S.C. § 6c(a)(A) (1994), in that Chesrow offered to enter into, entered into, or confirmed the execution of, transactions involving commodities for future delivery which transactions were of the character of or were commonly known to the trade as accommodation trades. *In re Bear Stearns*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,663 (Respondents engaged in noncompetitive wash trades to accommodate opposite trader in violation of Section 4c(a)(A) of the Act).

#### Offsetting and Accommodation Trading

Filling an order by offset includes a broker noncompetitively matching an equivalent or nearly equivalent quantity of customer buy and sell orders opposite an accommodating trader instead of executing the customer orders by open outcry. Unless executed pursuant to exchange rules, a broker's use of one customer's order to fill another order violates Section 4b(a)(iv) of the Act whether done directly or indirectly. *See In re Rousso*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,133 at 45,300 (CFTC Aug. 20, 1997), *aff'd sub nom. Rousso v. CFTC*, No. 97-4232, (2d Cir. Mar. 11, 1998).

Between November 1991 and June 1993, Schiller violated Section 4b(a)(iv) of the Act by indirectly filling his customer orders by offset. During the same time period, Chesrow violated Section 4b(a)(iv) of the Act, 7 U.S.C. § 6b(a)(iv) (1994), by aiding and abetting Schiller, within the meaning of Section 13(a), 7 U.S.C. § 13c(a) (1994), in indirectly filling customer orders by offset, in that he willfully entered into noncompetitive trades with Schiller that involved customer orders.

Chesrow's conduct also violated Section 4c(a)(A) of the Act, 7 U.S.C. § 6c(a)(A) (1994), in that Chesrow offered to enter into, entered into, or confirmed the execution or, transactions involving commodities for future delivery which transactions were of the character of or were

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<sup>3</sup> "Recognition" involves the selection, by the broker, of the trader opposite whom he executes a customer order. Often, several traders will bid at the same price and the broker has the ability to choose among them. If a local carries favor with the broker by accommodating him, the broker is more likely to recognize that local on other trades, thus contributing to the local's overall success.

commonly known to the trade as accommodation trades. *In re Bear Stearns*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,663.

#### Record-keeping Violations

Members of contract markets are required to prepare and maintain daily trading records. Together these records form an audit trail that is essential for the detection and prevention of fraud. When portions of the audit trail are missing or altered, the usefulness of the audit trail to the Commission is greatly reduced, making the detection of fraud significantly more difficult.

Between November 1991 and June of 1993, Schiller and Chesrow violated Section 4g(a) of the Act, 7 U.S.C. § 6g(a) (1994) and Regulation 1.35(d), 17 C.F.R. § 1.35(d) (1999), in that the written records they prepared or failed to prepare to record the execution of purchases and sales of cattle futures contracts, inaccurately identified, failed to identify or misrepresented required information or were prepared or handled in violation of applicable audit trail and records requirements. These violations are neither trivial nor technical and represent serious violations of the Act.

### **IV. OFFERS OF SETTLEMENT**

Schiller and Chesrow have submitted Offers of Settlement in which they neither admit nor deny the allegations of the Complaint or the findings in this Order. Subject to the foregoing, Schiller and Chesrow acknowledge service of the Complaint and this Order and admit the jurisdiction of the Commission with respect to the matters set forth in the Complaint and this Order; waive: (1) a hearing; (2) 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 Offer; (5) all claims which they 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.

Schiller and Chesrow stipulate that the record basis on which this Order is entered consists of the Complaint, this Order and the findings to which they have consented in their Offers, which are incorporated in this Order. Schiller and Chesrow consent to the Commission's issuance of this Order, which makes findings as set forth herein, and orders them to comply with their undertakings.

### **V. FINDING 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 Schiller and Chesrow violated Sections 4b(a)(i), 4b(a)(iv) and 4g(a) of the Act and Regulations 1.35(d) and 1.38(a) and that Chesrow violated Section 4c(a)(A) of the Act.

## VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Schiller shall cease and desist from violating Sections 4b(a)(i), 4b(a)(iv), and 4g(a) of the Act and Regulations 1.35(d) and 1.38(a);

B. Beginning on the third Monday after the date of this Order, Schiller shall be prohibited from trading on the floor of any exchange for his own account or for any account in which he has a direct or indirect interest on any contract market, and all contract markets shall refuse Schiller floor trading privileges thereon; provided, however, Schiller shall be permitted to trade off the floor, including electronically, of any contract market for his own account, including as a member, if duly admitted;

C. Schiller's registration as a floor broker is hereby revoked;

D. Schiller shall pay a civil monetary penalty in the amount of one hundred and fifty thousand dollars (\$150,000) payable in three payments with the first payment of fifty thousand dollars (\$50,000) due within ten (10) days of the date of this Order. The second and third payments of fifty thousand dollars (\$50,000) each plus interest shall be due on (insert dates). Schiller shall pay post-judgment interest from ten (10) days of the date of this Order on all unpaid amounts until his civil monetary penalty is paid in full, at the Treasury Bill rate prevailing on the date of this Order, pursuant to 28 U.S.C. § 1961(a). Schiller shall make such payment 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, at 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581 under cover of a letter that identifies Schiller and the name and docket number of this proceeding. A copy of the cover letter and the form of payment shall be simultaneously transmitted to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2)(2001), if this amount is not paid in full within fifteen (15) days of the due date, Schiller shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until he has shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of the payment has been made;

E. Schiller shall comply with his undertaking, as set forth in his Offer: Neither Schiller nor any of his employees, agents, or representatives shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding in the Order, or creating, or tending to create, the impression that the Complaint or Order is without a factual basis; provided, however, that nothing in this provision affects the respondent's: (i) testimonial obligations; or (ii) right to take appropriate legal positions in other proceedings to which the Commission is not a party;

F. Chesrow shall cease and desist from violating Sections 4b(a)(i), 4b(a)(iv), 4c(a)(A), and 4g(a) of the Act and Regulations 1.35(d) and 1.38(a);

G. Beginning on the third Monday after the date of this Order, Chesrow shall be prohibited for two years from trading on the floor of any exchange for his own account or for any account in which he has a direct or indirect interest on any contract market, and all contract markets shall refuse Chesrow floor trading privileges thereon; provided, however, Chesrow shall be permitted to trade off the floor, including electronically, of any contract market for his own account, including as a member, if duly admitted;

H. Chesrow shall pay a civil monetary penalty in the amount of fifty thousand dollars (\$50,000) within ten (10) days of the date of the entry of this Order. Chesrow shall make such payment 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, at 1155 21<sup>st</sup> Street, N.W., Washington D.C. 20581 under cover of a letter that identifies Chesrow and the name and docket number of this proceeding. A copy of the cover letter and the form of payment shall be simultaneously transmitted to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2)(2001), if this amount is not paid in full within fifteen (15) days of the due date, Chesrow shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until he has shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of the payment has been made; and

I. Chesrow shall comply with his undertakings, as set forth in his Offer:

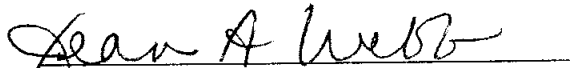
Neither Chesrow nor any of his employees, agents, or representatives shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding in the Order, or creating, or tending to create, the impression that the Complaint or Order is without a factual basis; provided, however, that nothing in this provision affects the respondent's: (i) testimonial obligations; or (ii) right to take appropriate legal positions in other proceedings to which the Commission is not a party; and

For a two year period commencing on the date of this Order, Chesrow shall not apply for registration or seek exemption from registration with the Commission in any capacity, and shall not engage in any activity requiring registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Commission Regulations, 17 C.F.R. § 4.14(a)(9).



**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 29, 2003