

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:

Michael H. Varner,

Respondent.

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) CFTC Docket No. 01-08  
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**ORDER MAKING FINDINGS AND  
IMPOSING REMEDIAL SANCTIONS**

**I.**

On June 1, 2001, the Commodity Futures Trading Commission ("Commission") filed a Complaint and Notice of Hearing against Michael H. Varner ("Varner"). The one-count Complaint alleged that Varner violated the Commission Order dated June 4, 1999 ("Commission's June 1999 Order" or "June 1999 Order"),<sup>1</sup> and in so doing has violated Section 6(c) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 9 (2001).

**II.**

In order to dispose of the allegations and issues raised in the Complaint, Varner 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 of fact in this Order Making Findings and Imposing Remedial Sanctions ("Order"), and prior to any adjudication on the merits, Varner acknowledges service of this Order, and consents to the entry of this Order in full and final settlement of any alleged violation of the above referenced laws or regulations, and to the use of the

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<sup>1</sup> *In re Michael Varner*, Comm. Fut. L. Rep. (CCH) ¶27,673 (CFTC June 4, 1999).

findings in this Order only in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.

### III.

The Commission finds the following:

#### A. SUMMARY

The Commission issued the June 1999 Order in settlement of a prior statutory disqualification (“SD”) proceeding against Varner.<sup>2</sup> The Commission’s June 1999 Order imposed certain restrictions on Varner’s floor broker (“FB”) registration for two years from the date thereof. Within the two-year period, however, Varner violated the restrictions set forth in the Commission’s June 1999 Order. Varner, in violating the Commission’s June 1999 Order, violated Section 6(c) of the Act.

#### B. SETTLING RESPONDENT

**Michael H. Varner** resides in Memphis, Tennessee 38111. Varner has been registered as a FB, trading on the New York Cotton Exchange since July 8, 1987. On April 5, 2002, Varner’s FB registration was revoked<sup>3</sup> in a related SD action arising out of the same set of facts.<sup>4</sup>

#### C. FACTS

In 1999, in settling an SD proceeding against Varner, the Commission issued its June 1999 Order accepting Varner’s offer of settlement. The Commission’s June 1999 Order imposed significant restrictions on Varner’s FB registration for two years from

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<sup>2</sup> *In re Michael Varner*, Comm. Fut. L. Rep. (CCH) ¶ 27,543 (CFTC Jan. 27, 1999).

<sup>3</sup> *Summary Disposition*, CFTC Docket SD 02-02, issued April 5, 2002.

<sup>4</sup> *In re Michael Varner*, CFTC Docket SD 02-02 (CFTC filed November 29, 2001).

June 4, 1999. It prohibited Varner from: (1) trading on behalf of customers, (2) clearing all his trades through any futures commission merchant (“FCM”) other than the FCM specified in the June 1999 Order, and (3) acting as a principal, partner, officer, or branch office manager of any entity registered or required to be registered with the Commission. Varner contravened the terms of the Commission’s June 1999 Order in that during the restricted period, Varner: (1) traded on behalf of Delta Capital Fund (“Delta Capital”), a limited partnership in which Varner and four other persons were participants; (2) cleared his trades for Delta Capital through an FCM not designated in the June 1999 Order; and (3) acted as the president and principal of Hunter Trading, an entity, which throughout the restricted period, was registered as a commodity trading advisor.

In violating the Commission’s June 1999 Order, Varner violated Section 6(c) of the Act.

#### **D. LEGAL DISCUSSION**

Section 6(c) of the Act provides, in pertinent part:

If the Commission has reason to believe that any person (other than a registered entity) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or has willfully made any false or misleading statement of a material fact in any registration application or any report filed with the Commission under this Act, or willfully omitted to state in any such application or report any material fact which is required to be stated therein, or otherwise is violating or has violated any of the provisions of this Act or of the rules, regulations, or orders of the Commission thereunder, it may serve upon such person a complaint stating its charges in that respect, which complaint shall have attached or shall contain therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made prohibiting from trading on or subject to the rules of any registered entity, and directing that all registered entity refuse all trading privileges to such person, until further notice of the Commission and to show cause why the registration of such

person, if registered with the Commission in any capacity, should not be suspended or revoked. [Emphasis added.]

Section 6(c) not only sets forth the procedures by which the Commission can enforce violations of the Act, it also identifies substantive violations, including the violation of a Commission order. The Commission has held that the failure to comply with a prior Commission order is a violation of Section 6(c).<sup>5</sup> In *Grossfeld*, the Commission affirmed the ALJ's finding that respondent had violated Section 6(b)<sup>6</sup> of the Act by failing to comply with a previously issued cease and desist order.<sup>7</sup> The Commission in effect interpreted Section 6(c) as having a substantive provision that prohibits violation of a Commission order. Therefore, Varner, in violating the Commission's June 1999 Order, violated Section 6(c) of the Act.

#### IV.

#### OFFER OF SETTLEMENT

Varner submitted an Offer of Settlement ("Offer") in which he neither admits nor denies the findings in this Order. Subject to the foregoing, Varner acknowledges the service of the Complaint and this Order; admits the jurisdiction of the Commission with respect to the matters set forth in the Complaint and this Order; and 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

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<sup>5</sup> *In re Grossfeld*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,726 at 40,362 (CFTC May 20, 1993).

<sup>6</sup> Prior to 1992, what is now Section 6(c) was designated as Section 6(b).

<sup>7</sup> *In re Grossfeld*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,275 at 38,895 (ALJ April 23, 1992) (failure to abide by earlier order constituted violation of Section 6(b)), *aff'd, in part, concerning liability and remanded, in part, concerning sanctions*, [1992-1994 Transfer Binder] Com. Fut. L. Rep. (CCH) ¶25,726 at 40,362 (CFTC May 20, 1993).

he may possess under the Equal Access to Justice Act, 5 U.S.C. §504, 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§231-32, 110 Stat. 863, and Part 148 of the Commission's Regulations, 17 C.F.R. §§148.1 *et seq.* ("Regulations"), relating to or arising from this action; and (5) any claim of Double Jeopardy based upon the institution of this proceeding or the entry of any order imposing civil penalty or any other relief.

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

1. Varner shall cease and desist from violating Section 6(c) of the Act;
2. For five years from the date of the Commission's Order accepting the Offer, Varner is prohibited from trading for any customer account, on or subject to the rules of any registered entity as that term is defined by Section 1(a)(29) of the Act, as amended, and all registered entities shall refuse Varner such privileges thereon;
3. For five years from the date of the Commission's Order accepting the Offer, Varner undertakes not to apply for registration in any capacity with the Commission;
4. Varner shall pay a civil monetary penalty in one payment the sum of Fifty Thousand Dollars (\$50,000);
5. Varner shall comply with the undertakings set forth in the Offer and incorporated in this Order; and
6. Upon being charged in any proceeding for any violation of the Commission Order accepting this Offer, Varner's registration and trading privileges, on or subject to the rules of any registered entity, as that term is defined by Section 1(a)(29) of the Act, shall automatically be suspended, and all registered entities shall suspend Varner's trading privileges. If found to have violated any provision in the Commission Order accepting this Offer, Varner shall be permanently prohibited from trading, on or subject to the rules of any registered entity, as that term is defined in Section 1(a)(29) of the Act registration, all registered entities shall refuse Varner such privileges, and he undertakes to be permanently prohibited from applying for registration in any capacity with the Commission.

V.

**FINDING OF VIOLATION**

Solely on the basis of the consent evidenced by the Offer and prior to any adjudication on the merits, the Commission finds that Varner in violating the Commission's June 1999 Order had thereby violated Section 6(c) of the Act.

VI.

**ORDER**

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Varner shall cease and desist from violating Section 6(c) of the Act;
- B. For five years from the date of the Commission's Order accepting this Offer, Varner is prohibited from trading for any customer account, on or subject to the rules of any registered entity as that term is defined by Section 1(a)(29) of the Act, as amended, and all registered entities shall refuse Varner such privileges thereon;
- C. For five years from the date of the Commission's Order accepting this Offer, Varner undertakes not to apply for registration in any capacity with the Commission;
- D. Varner shall pay a civil monetary penalty in one payment the sum of Fifty Thousand Dollars (\$50,000) due within ten (10) days of the signing of the Commission's Order accepting the Offer. Varner shall make such payment by either 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 in the Division of Enforcement, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581 under cover of a letter that identifies Michael H. Varner and 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: Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, and to Stephen Obie, Associate Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 140 Broadway, 19<sup>th</sup> Floor, New York, NY 10005. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if Varner fails to pay the full amount of this

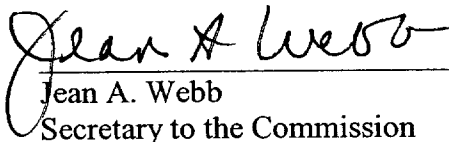
penalty within fifteen (15) days of the due date, he shall be automatically prohibited from the privileges of all registered entities until he shows to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of payment has been made;

- E. Upon being charged in any proceeding for any violation of the Commission Order accepting this Offer, Varner's registration and trading privileges, on or subject to the rules of any registered entity, as that term is defined by Section 1(a)(29) of the Act, shall automatically be suspended, and all registered entities shall suspend Varner's trading privileges. If found to have violated any provision in the Commission Order accepting this Offer, Varner shall be permanently prohibited from trading, on or subject to the rules of any registered entity, as that term is defined in Section 1(a)(29) of the Act registration, all registered entities shall refuse Varner such privileges, and he undertakes to be permanently prohibited from applying for registration in any capacity with the Commission; and
- F. Neither Varner nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in this Order, or creating, or tending to create, the impression that the Complaint or this Order is without factual basis; provided, however, that nothing in this provision affects Varner's testimonial obligations or his right to take legal positions in other proceedings to which the Commission is not a party. Varner will undertake all steps necessary to assure that all of his agents and employees understand and comply with this agreement.

This Order shall take effect on this date.

By the Commission,

Date: June 30, 2003

  
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Jean A. Webb

Secretary to the Commission  
Commodity Futures Trading Commission