

CLERK, U. S. DISTRICT COURT  
 SOUTHERN DISTRICT OF TEXAS  
 FILED  
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 MICHAEL N. MILBY, CLERK  
 BY DEPUTY N. Zippin

IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF TEXAS  
 HOUSTON DIVISION

UNITED STATES COMMODITY FUTURES	)	
TRADING COMMISSION,	)	
	)	Docket No. H-03-909
Plaintiff,	)	
	)	Hon. Melinda Harmon
v.	)	
	)	
HUNTER SHIVELY,	)	
	)	
Defendant.	)	

**CONSENT ORDER OF PERMANENT INJUNCTION  
 AND OTHER RELIEF AGAINST DEFENDANT HUNTER SHIVELY**

On March 12, 2003, Plaintiff Commodity Futures Trading Commission (the "Commission") filed a three-count Complaint against Enron Corp. ("Enron") and Hunter Shively ("Shively") seeking a civil monetary penalty, and injunctive and other relief for violations of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2000), and Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2002). Defendant Shively was charged in Count I of the Complaint with manipulating or attempting to manipulate prices in the Henry Hub natural gas spot market on July 19, 2001, in violation of §§ 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. § 9, 13b, and 13(a)(2).

I.

**CONSENT AND AGREEMENT**

In order to dispose of all the allegations and issues raised in the Complaint and effect a full and final settlement of any alleged violations of the above-referenced laws or

regulations without a trial on the merits or any further judicial proceedings, Shively, without admitting or denying any of the allegations of the Complaint:

A. Consents to the entry of this Consent Order of Permanent Injunction and Other Relief Against Defendant Shively ("Order");

B. Affirms that Shively has agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein;

C. Acknowledges service of the Summons and Complaint and this Order;

D. Admits jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;

E. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;

F. Waives:

1. 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;
2. 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; and

3. all rights of appeal from this Order.

## II.

### TERMS OF ORDER

For purposes of settling this proceeding only, and without Shively admitting or denying any of the allegations in the Complaint, the parties consent to the entry of an order by this Court as follows:

### ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Shively is permanently restrained, enjoined and prohibited from directly or indirectly manipulating or attempting 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, including any contract market in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2).
2. Shively is prohibited, for a period of eighteen (18) months from the date of this Order, from applying for registration or claiming exemption for registration with the CFTC in any capacity, and engaging in activity requiring such registration or exemption from registration, except as provided for in CFTC Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).
3. Shively shall comply with his undertaking to cooperate fully with the Commission in this proceeding and in any investigation, litigation or any proceeding commenced by the Commission related to this proceeding by, among other things: a) responding promptly, completely, and truthfully to any inquiries or requests for information; b) authenticating documents; c) testifying completely and truthfully; and d) not asserting privileges under the Fifth Amendment of the United States Constitution.

## III.

### MISCELLANEOUS PROVISIONS

A. AMENDMENTS AND SEVERABILITY. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (i) reduced in writing, (ii) signed by all parties, and (iii) approved by order of the Court. If any provision of this Order or the application

of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.

B. PUBLIC STATEMENTS. By consenting to the entry of this Order, Shively agrees that neither he nor any of his agents or employees under his authority and control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or creating, or tending to create the impression that the Complaint and Order are without a factual basis; provided, however, that nothing in this provision shall affect Shively's: (i) testimonial obligations; or (ii) right to take positions in other proceedings to which the Commission is not a party. Shively shall take all steps necessary to ensure his agents and employees comply with this provision.

C. JURISDICTION. This Court shall retain jurisdiction of this matter to ensure compliance with this Order and for all other purposes related to this action.

D. INADMISSIBLE IN OTHER PROCEEDINGS. Except with respect to a proceeding brought by the Commission, this Order is for purposes of this proceeding only and shall not be admissible as evidence in any form or for any purpose in any judicial or administrative proceeding other than to enforce its terms; provided that Shively does not consent to the use of this Order as the sole basis for any proceeding brought by the Commission other than a proceeding brought to enforce the terms of this Order and provided further that nothing in this Order shall be construed to confer any rights on any third parties or inure to the benefit of any third parties.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this Consent Order of Permanent Injunction and Other Relief Against Defendant Shively.

CONSENTED TO BY:

Dated: July 14, 2004

 Hunter Shively   Claudia Frost, Esq. Attorney-in-Charge Mayer Brown, Rowe & Maw 700 Louisiana Street Houston, TX 77002 (713) 221-1651  Attorneys for Hunter Shively	 Stephen J. Obie Attorney-in-Charge Lenel Hickson, Jr. David Acevedo W. Derek Shakabpa Michael R. Berlowitz United States Commodity Futures Trading Commission Division of Enforcement 140 Broadway New York, NY 10035 (646) 746-9766 (Obie) (646) 746-9940 (Facsimile)
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Done and Ordered this 16<sup>th</sup> day of July, 2004.

  
 HON. MELINDA HARMON  
 UNITED STATES DISTRICT COURT JUDGE