

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

In re:

VICTOR LOCHMANN

CFTC Docket No. 05-12

COMPLAINT AND NOTICE OF HEARING  
PURSUANT TO SECTIONS 6(c), 6(d) AND  
8a(4) OF THE COMMODITY EXCHANGE  
ACT

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I

The Commodity Futures Trading Commission (“CFTC” or “Commission”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges, that:

SUMMARY

1. An Iowa farmer, Thomas Murrane (“Murrane”), invested \$56,000 with his former broker, Victor Lochmann (“Lochmann”), to trade commodity futures from August through December 2003 (the “relevant time”). Lochmann deposited Murrane’s funds into his personal checking account, transferred some of Murrane’s funds into a commodity futures trading account in Lochmann’s name and engaged in unauthorized trading of Murrane’s funds. Defendant Lochmann’s acts violated Sections 4b(a)(2)(i) and (iii) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 6b(a)(2)(i) and (iii) (2002).

## II.

### PROPOSED RESPONDENT

2. Defendant Victor Lochmann, who resides in Humeston, Iowa was registered as an AP of Duane Swarts brokerage (“Swarts”), an IB, from November 1988 to January 2003, when Swarts closed.

## III.

### FACTS

#### A. Background

3. Murrane frequently uses futures to hedge corn and cattle and over the past ten years has traded through Swarts brokerage where Murrane maintained a discretionary trading account in his name, using Lochmann as his broker.

4. After Swarts closed in January 2003, Murrane continued to call Lochmann requesting that Lochmann execute trades for him.

#### B. Misrepresentations of Material Fact

5. In early August 2003, Murrane called Lochmann with an order to sell six December live cattle, thinking that Lochmann was still an AP of Swarts. Lochmann informed Murrane that Swarts had closed, but Lochmann would still place the order for him.

6. Lochmann told Murrane that he was now trading through Man Financial, Inc. (“Man”) and would assist Murrane to open an account there.

7. Lochmann sent Murrane a set of Man’s account opening documents and instructed Murrane to complete them and return them to Lochmann. Lochmann said he would then open an account at Man in Murrane’s name. However, after Murrane completed and sent the documents to Lochmann, Lochmann informed Murrane that they were incomplete, and Lochmann sent Murrane a second account application to fill out. In the meantime, Lochmann

advised Murrane that he would trade the December cattle contracts in his personal account at Man to avoid further delay. Having previously been a registered AP with Man, Lochmann knew or should have known that depositing customer funds into his personal trading account was prohibited. Despite this, he assured Murrane that there would be no problem with that arrangement.

8. Murrane did not complete the second account application, and Lochmann never opened an account in Murrane's name at Man. Murrane never signed a power of attorney or any other document giving Lochmann authority to make trading decisions for him. Murrane also never gave Lochmann verbal authority to make discretionary trades on Murrane's behalf.

9. As more fully described below, Lochmann falsely informed Murrane that all of Murrane's funds would be used for commodity futures trading. Lochmann also falsely informed Murrane that he would follow Murrane's trading instructions and would not execute any trades on Murrane's behalf without Murrane's prior approval.

### **C. Misappropriation**

10. On August 27, 2003, Lochmann, at Murrane's direction, sold 6 December live cattle futures contracts through Lochmann's personal Man account.

11. On August 28, 2003, Murrane, pursuant to Lochmann's instructions, wrote a check to Lochmann for \$10,000 and hand delivered it to him. Lochmann deposited the check into his checking account at Great Western Bank in Leon, Iowa. Murrane gave Lochmann four additional checks in September and October 2003 totaling another \$46,000 that Lochmann also deposited into his checking account at Great Western Bank. Murrane understood from Lochmann that the collective \$56,000 was to be used as margin money for Murrane's futures trades and indicated such on the memo line of his checks to Lochmann. In fact, Lochmann

deposited only \$36,854 of these funds into his trading account at Man, meaning that \$19,146 of Murrane's money was not used as Murrane had understood and as he had directed Lochmann. Lochmann has never returned these remaining funds to Murrane.

12. Lochmann opened his trading account at Man in December 2002, deposited a total of \$59,334, withdrew \$21,975 and suffered trading losses of \$38,856. As of November 2003, the account had a zero balance and Lochmann closed the account in January 2004 with a negative \$1,794 balance.

13. Aside from the Man account, Lochmann had one other futures trading account at Refco, Inc., a registered FCM. He opened the account in March 2004, deposited a total of \$2,500 in the account from his checking account at Great Western Bank, withdrew \$812 and lost \$1,688 trading. He closed the Refco account in August 2004 with a zero balance.

**D. Unauthorized Trading**

14. In late December 2003, cattle prices dropped sharply due to news that a cow in the United States had been diagnosed with bovine spongiform encephalopathy (BSE, or "mad cow" disease), and Murrane called Lochmann to offset what he believed to be his short futures position in cattle at a profit. However, Lochmann had already offset Murrane's position on October 15, 2003 without Murrane's knowledge or consent.

15. Instead of admitting that he had already offset the position, Lochmann told Murrane that he would comply with his request and send him a check once he got out of the position.

16. Lochmann did not send Murrane any funds or offer any explanation as to why the funds were not provided. Instead, when Murrane asked Lochmann why he had not received the funds Lochmann gave him an excuse such as, "the house [Man] did not understand my request

for withdrawal,” and that he was going to visit his sick mother and would need an extra week to obtain the funds.

17. Lochmann executed trades on Murrane’s behalf without Murrane’s knowledge or consent, failed to execute trades on Murrane’s behalf as instructed by Murrane, and failed to disclose to Murrane that he had not placed the trades as Murrane had ordered.

**E. Recent Developments**

18. Lochmann has admitted owing Murrane money and on February 11, 2004 gave Murrane a promissory note for \$67,500. The note was due on July 5, 2004, but Lochmann never paid it. In September or October 2004, Lochmann informed Murrane that he actually owed him about \$75,000 and that he had sent Murrane a check for that amount, but Murrane never received it.

19. On October 20, 2004, Lochmann filed for chapter 7 bankruptcy (U.S. Bankruptcy Court, Southern District of Iowa (Des Moines) Petition # 04-06497-lmj7) and Murrane is listed as a creditor holding a secured claim for \$70,000. Lochmann was granted a discharge on January 25, 2005.

**IV.**

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT  
AND COMMISSION REGULATIONS**

**COUNT I**

**VIOLATIONS OF SECTIONS 4b(a)(2)(i) AND (iii) OF THE ACT: FRAUD BY  
MISREPRESENTATIONS AND FALSE STATEMENTS, MISAPPROPRIATION  
OF CUSTOMER FUNDS, AND UNAUTHORIZED TRADING**

20. The allegations set forth in paragraphs 1 through 19 are re-alleged and incorporated herein.

21. Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully deceive or attempt to deceive by any means whatsoever other persons in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the products or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

22. Lochmann willfully violated §§ 4b(a)(2)(i) and (iii) of the Act by: (1) misrepresenting to Murrane that he would use all of Murrane's funds for commodity futures trading, but failing to disclose that he deposited only \$36,854 of the \$56,000 Murrane gave him into a futures trading account; (2) engaging in unauthorized trading by executing trades on Murrane's behalf without Murrane's knowledge or consent; and (3) failing to execute trades on Murrane's behalf as instructed by Murrane, and failing to disclose that he had not placed the trades as ordered.

23. Each material misrepresentation or omission made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Sections 4b(a)(2)(i) and (iii) of the Act.

## V.

By reason of the foregoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute public administrative proceedings to determine whether the allegations set forth above are true and, if so, whether an

appropriate order should be entered in accordance with Sections 6(c), 6(d) and 8a(4) of the Act, 7 U.S.C. §§ 9, 13b and 12a(4) (2002).

Sections 6(c) and 8a(4) of the Act allow the Commission to (1) prohibit the respondent from trading on or subject to the rules of any registered entities, and require all registered entities to refuse such person all privileges thereon for such period as may be specified in the Commission's Order; (2) if the respondent is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of that respondent; and (3) assess against a respondent a civil monetary penalty of not more than the higher of \$120,000 for each violation, \$130,000 for violations on or after October 24, 2004, or triple the monetary gain to the respondent for each violation.

Section 6(d) of the Act allows the Commission to enter an Order directing that the respondent cease and desist from violating the provisions of the Act and Regulations found to have been violated.

## VI.

WHEREFORE, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the allegations set forth in Section III above be held before an Administrative Law Judge, in accordance with the Commission's Rules of Practice under the Act ("Rules"), 17 C.F.R. §§ 10.1 *et seq.* (2004), at a time and place to be set as provided by Section 10.61 of the Rules, 17 C.F.R. § 10.61, and that all post-hearing procedures shall be conducted pursuant to Sections 10.81 through 10.107 of the Rules, 17 C.F.R. §§ 10.81 through 10.107.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Complaint within twenty (20) days after service, pursuant to Section 10.23 of the Rules, 17 C.F.R. § 10.23, and pursuant to Section 10.12(a) of the Rules, 17 C.F.R. § 10.12(a),

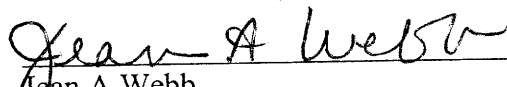
shall serve two copies of such Answer and of any documents filed in this proceeding upon Rosemary Hollinger, Regional Counsel and Associate Director, and Susan Gradman, Senior Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 525 West Monroe, Suite 1100, Chicago, Illinois 60661. If Respondent fails to file the required Answer or fails to appear at a hearing after being duly served, Respondent shall be deemed in default and the proceeding may be determined against Respondent upon consideration of the Complaint, the allegations of which shall be deemed to be true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served upon the Respondent personally or by registered or certified mail, pursuant to Section 10.22 of the Rules, 17 C.F.R. § 10.22.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of the investigative or prosecutorial functions in this or any factually related proceeding will be permitted to participate or advise in the decision in this matter except as witness or counsel in a proceeding held pursuant to notice.

By the Commission.

Dated: July 6, 2005

  
Jean A Webb  
Secretary of the Commission  
Commodity Futures Trading Commission