

III.

The Commission finds the following:

A. SUMMARY

From approximately January 2006 to May 2009 (the “Relevant Period”), the Respondents engaged in a trade allocation scheme whereby profitable natural gas futures trades were directed into Hopkins’ personal account while losing trades were improperly transferred from Hopkins’ personal account and re-allocated into the account of Hopkins’ employer. Through this allocation scheme, the Respondents engaged in a risk-free trading strategy for Hopkins and defrauded Hopkins’ employer. By this conduct, Respondents violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2006), and Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C).

B. RESPONDENT

Thomas Carroll resides in Mahwah, New Jersey. Carroll was registered with the Commission as an associated person of a futures commission merchant from 2004 to 2008 and has been registered as a floor broker since September 2008.

R. Scott Hopkins resides in Plano, Texas. Hopkins has never been registered with the Commission in any capacity.

C. FACTS

During the Relevant Period, Hopkins was President, Director, and the head of trading for a natural gas delivery company. Carroll was a trading desk manager who handled the execution of Hopkins’ natural gas futures orders. During the Relevant Period, Hopkins and Carroll engaged in a trade allocation scheme in which they typically entered an order to buy or sell natural gas futures contracts and directed that the fill for this order be placed into Hopkins’ personal account. If the market then moved in a direction that favored the filled order, they kept this trade in Hopkins’ personal account and offset the initial transaction at a profit. If, however, the market moved in a direction such that the initial trade became unprofitable, they transferred or re-allocated the initial losing trade from Hopkins’ personal account to his employer’s account. This, in turn, resulted in Hopkins’ employer offsetting the initial transaction at a loss. Hopkins also attempted to conceal his involvement in this scheme by deleting his name and instead inserting the name of his employer onto certain trading account statements.²

to the use of the Offers or this Order, or the findings consented to in the Offers or this Order, by any other party in any other proceeding.

² In accepting Respondents’ Offers, the Commission took into consideration that they are being separately charged and sanctioned by the New York County District Attorney’s Office in a parallel criminal proceeding for this same misconduct.

IV.

LEGAL DISCUSSION

Fraudulent trade allocation constitutes a violation of Section 4b of the Act and the CRA and occurs when one knowingly misappropriates and wrongfully allocates profitable customer trades to his own account. *See In re GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 (CFTC August 11, 1992), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993) (associated persons defrauded their customers by directing profitable fills to favored accounts). In addition, a broker, such as Carroll, has an obligation to act in the best interest of his customers, which includes a duty to seek the best possible price for his customers. *In re Murphy*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,798, at 31,351-52 (CFTC Sept. 25, 1985); *United States v. Ashman*, 979 F.2d 469, 478 (7th Cir. 1992); *United States v. Dial*, 757 F.2d 163, 168 (7th Cir. 1985). A floor broker violates that duty when he chooses instead to act on behalf of himself (or someone other than his customer) to the disadvantage of his customer. *In re Murphy*, ¶ 22,798 at 31,351-52.

A violation of Section 4b requires that the wrongdoer act with scienter. *See Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988). Scienter "refers to a mental state embracing an intent to deceive, manipulate, or defraud." *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 448 (D.N.J. 2000). The Commission "need not show that defendants acted with an evil motive or an intent to injure[;] rather, recklessness is sufficient to satisfy the scienter requirement." *Id.* (internal quotations omitted); accord, *CFTC v. Savage*, 611 F.2d 270, 283 (9th Cir. 1979); *In re JCC, Inc.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,080 at 41,579 (CFTC May 12, 1994), *aff'd sub nom. JCC, Inc. v. CFTC*, 63 F.3d 1557 (11th Cir. 1995). Specifically, the Commission can establish scienter by showing that the defendant made an extreme departure from the standards of ordinary care. *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002). Scienter cannot be avoided by ignorance brought about by willfully or carelessly ignoring the truth. *See Savage*, 611 F.2d at 283; *see also Do v. Lind-Waldock & Co.*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,516, at 43,321 (CFTC Sept. 27, 1995) (an employee acted recklessly by failing to ascertain the status of an order prior to advising the customer that it was too late to cancel).

The evidence establishes that the Respondents fraudulently allocated losing trades to the account of Hopkins' employer and ensured that profitable trades remained in Hopkins' personal account. Accordingly, the Respondents cheated, defrauded and deceived Hopkins' employer in violation of Sections 4b(a)(2)(i) and (iii) of the Act, with respect to misconduct before June 18, 2008, and Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, with respect to misconduct on or after June 18, 2008.

V.

OFFERS OF SETTLEMENT

The Respondents have submitted Offers in which they, without admitting or denying the findings herein:

- A. Admit the jurisdiction of the Commission with respect to the matters set forth in this Order;
- B. Acknowledge service of this Order;
- C. Waive: (1) the filing and service of a Complaint and Notice of Hearing; (2) a hearing; (3) all post-hearing procedures; (4) judicial review by any court; (5) any and all objections to the participation by any member of the Commission's staff in consideration of the Offer; (6) any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations ("Regulations"), 17 C.F.R. §§ 148.1-30 (2010), relating to or arising from this proceeding; (7) any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to or arising from this proceeding; and (8) any claim of Double Jeopardy based upon institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and
- D. Stipulate that the record basis upon which this Order is entered shall consist solely of the findings in this Order to which Respondents have consented to in the Offers; and consent to the Commission's issuance of this Order, which: (1) makes findings by the Commission that the Respondents violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2006), and Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C); (2) orders Respondents to cease and desist from violating Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA; (3) permanently prohibits Respondents from, directly or indirectly, trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006); (4) orders Hopkins to pay a civil monetary penalty in the amount of six hundred fifty thousand dollars (\$650,000), plus post-judgment interest, \$650,000 and Carroll to pay a civil monetary penalty of fifty thousand dollars (\$50,000), both within thirty (30) days of the date of entry of this Order; and (5) orders Respondents to comply with the undertakings consented to in their Offers and set forth below in Section VI of this Order.

Upon consideration, the Commission has determined to accept the Respondents' Offers.

VI.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that the Respondents violated Sections 4b(a)(2)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(2)(i) and (iii) (2006), and Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C).

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. The Respondents shall cease and desist from violations of Sections 4b(a)(1)(A) and (C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C);
2. The Respondents are permanently prohibited from, directly or indirectly, trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006);
3. Hopkins shall pay a civil monetary penalty in the amount of \$650,000, plus post-judgment interest, within thirty (30) days of the date of entry of this Order. Carroll shall pay a civil monetary penalty in the amount of \$50,000, plus post-judgment interest, within thirty (30) days of the date of entry of this Order. Post-judgment interest for Respondents' civil monetary penalty obligations shall accrue beginning on the thirty-first (31) day after the date of entry of this Order, and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Hopkins and Carroll shall pay their respective civil monetary penalties by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission, and sent to the following address:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman - AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: 405-954-6569

If the payment of the civil monetary penalty is to be made by electronic funds transfer, the paying Respondent shall contact Marie Bateman, or her successor, at the above address to receive payment instructions and shall fully comply with those instructions. The paying Respondent shall accompany the payment of the penalty with a cover letter that identifies the payor and the name and docket number of this proceeding. The paying Respondent shall

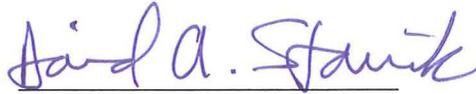
simultaneously transmit copies of the cover letter and the form of payment to: (1) Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, D.C. 20581; and (2) Chief, Office of Cooperative Enforcement, Division of Enforcement, at the same address; and

4. The Respondents shall comply with the following undertakings:
 - a. Neither the Respondents nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order, or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision shall affect the Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. The Respondents shall take all steps necessary to ensure that all of their agents and employees under their authority or control, if any, understand and comply with this agreement;
 - b. Respondents shall never apply for registration or claim exemption from registration with the Commission in any capacity, and shall never engage in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010); and
 - c. Respondents shall never act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2010)), agent, officer or employee of any person (as that term is defined in Section 1a(28) of the Act, 7 U.S.C. § 1a(28)) registered, required to be registered, or exempted from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010).
 - d. Respondents agree that they shall never engage, directly or indirectly, in:
 - i. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1)) ("commodity options"), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(i)) ("forex contracts") for their own personal account or for any account in which they have a direct or indirect interest;
 - ii. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;
 - iii. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts; and/or

- iv. soliciting, receiving, or accepting any funds from any person for purposes of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts.

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

By the Commission



David A. Stawick
David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: December 9, 2010