



**U.S. COMMODITY FUTURES TRADING COMMISSION**

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THOMAS COST,  
Complainant,

v.

MARK GOSCENSKI,  
TRENTON JAMES KIMMINAU, and  
GLOBAL FUTURES EXCHANGE &  
TRADING COMPANY, INCORPORATED,  
Respondents.

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\* CFTC Docket No. 07-R059  
\* Served via Federal Express  
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**NOTICE OF CORRECTIONS**

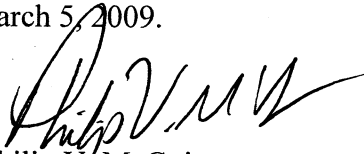
The Initial Decision contains a number of minor errors. Thus, the following corrections are hereby made to the Initial Decision:

- Page 1: In the seventh line in the paragraph, change “five months” to “ten months”.
- Page 2: In the fourth line of the first full paragraph, change “sufficiently margined” to “sufficient margin”.
- Page 5: In the fourth line of the first full paragraph, change “wired” to “wire”.
- Page 10: In footnote 2, insert “the” before “CFTC”.
- Page 11: In the fourth line of the finding 13, change “was” to “would be”; and in the first line of finding 14, change “CDT” to “PDT”.
- Page 12: In the fourth line of the finding 15, change “CDT” to “PDT”.
- Page 13: In the last line of the first paragraph in finding 16, change “45 minutes” to “40 minutes”.

For the parties’ convenience, a corrected version of the Initial Decision is attached to this Notice.

This Notice does not change the deadline for any party to file a Notice of Appeal.

Dated March 5, 2009.

A handwritten signature in black ink, appearing to read "Philip V. McGuire". The signature is stylized and cursive, with a large initial "P" and "M".

Philip V. McGuire,  
Judgement Officer



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**INITIAL DECISION**  
[Corrected Version]

***Introduction***

This dispute arises from a combination of rookie trading mistakes and a mutual “breakdown in communications,” before and after the liquidation of an under-margined September CBOT silver futures position. Thomas Cost, a resident of Los Angeles, California, was a first-time futures trader who had opened a self-directed, discount account with Global Futures Exchange & Trading Company, an introducing broker located in nearby Encino, California. Before the disputed liquidation, Cost had successfully traded the account for about ten months without generating a margin deficit. The mistakes and miscommunications stretched over approximately 20 hours: from the early afternoon of Wednesday August 15, 2007, after the September CBOT silver market had closed sharply down with Cost’s silver contract narrowly margined, but before Cost’s local bank had closed; to mid-morning on

Thursday August 16, when Global Futures' margin department sent Cost a courtesy e-mail which stated that Global Futures was liquidating Cost's under-margined silver position.

When the CBOT September silver futures had closed on Wednesday August 15, Cost's account held only \$200 in excess margin. Cost had intended to hold the position for several more days, and was willing and able to add more funds to maintain adequate margin. However, either Cost too optimistically concluded that this amount was sufficient margin to sustain further price drops or Cost simply miscalculated the amount of margin. Whatever his specific mistake, Cost decided not to deposit additional funds before his local bank closed that day.

The next day, Thursday August 16, at 6:25 PDT (8:25 CDT), the September CBOT silver future opened 22 points lower. At this point, Cost's silver future was under-margined. Although Cost mistakenly concluded that he was adequately margined, he became concerned that he was on the brink of a margin call. Thus, at 7:15 a.m. PDT, Cost e-mailed his account executive, Mark Goscenski, that he would be hand-delivering a cashier's check for \$7,000, around 10:00 a.m., which was about an hour after his local bank would open. In his e-mail, Cost did not offer any explanation for why he was depositing the additional funds, did not mention the silver position or the silver market, and did not express any urgency. In any event, Goscenski, who normally arrived in the office at 6:45 a.m., was busy speaking to clients who were dealing with fast market conditions in various precious metals and stock index markets, and would not check his e-mail until well after the disputed liquidation. Cost would not attempt to contact Global Futures again until 9:20 a.m.

Cost had initially funded the account by a bank wire sent directly to the clearing broker in Chicago. Subsequently, Cost switched to hand-delivering cashier's checks to Goscenski at Global Futures' Encino office. Cost made the decision, on August 16, to deposit the additional

funds via a hand-delivered cashier's check without consulting Goscenski. Cost's decision to forgo wiring the funds directly to the Chicago clearing broker at 9:00 a.m. PDT, and rather hand-deliver a cashier's check to his California introducing broker at 10:00 a.m., would prove to be fateful.

Around 9:00 a.m. PDT, when Cost's bank opened, Cost obtained the cashier's check, and hopped into his car to drive toward Global Futures' office. Meanwhile, at 9:18 a.m., Trenton Kimminau, a margin analyst with Global Futures' margin department, liquidated Cost's deteriorating silver position, which resulted in a \$2,293 account deficit. Consistent with Global Futures' practice, the liquidation was promptly reported electronically to Global Futures' on-line trading platform.

Cost, who apparently did not have a cellular phone, realized that he had not called Goscenski from the bank to say that he was on his way with the check. Thus, at 9:20 a.m., he stopped at his house, which was on the way from the bank to Global Futures' office, to call Goscenski. Cost did not turn his computer back on to check his account, and thus missed the liquidation report. Cost called Goscenski, and in an extremely short conversation simply stated that he had the check in hand and would be arriving at the Encino office around 10:00 a.m. with the check. During this quick exchange, Cost did not mention his earlier e-mail, and again did not explain that he was depositing additional funds to cover an open position and did not mention his silver position or the silver market.

Around 10:00 a.m. PDT, Cost arrived at Global Futures' office and delivered the check to Goscenski, who promptly handed the check to Global Futures' accounting department. Cost simply assumed that Goscenski was aware of the conditions in the silver market and aware of the status of Cost's account. Thus, Cost merely stated that the check was to "cover my account" --

rather than “to cover an open position.” Cost did not convey any sense of urgency, and “joked” that Goscenski need not worry about the margin in Cost’s account. Cost prompted Goscenski to report that the September silver was “up,” but did not ask Goscenski for the current price, and did not ask about the status of his silver position or his account. As a result, when Cost next asked to speak to the technical support employee who had previously helped him over the phone, Goscenski assumed that his business with Cost was done and did not check the status of Cost’s account at his terminal, and would not learn about the liquidation until after Cost had left the office.

At 10:41 a.m. PDT, Kimminau e-mailed Cost a courtesy message reporting the liquidation: “[Because] your account has fallen on margin call [and your account] does not currently have sufficient funds to meet the exchange initial margin requirements. . . I have no choice but to liquidate the position.” About twenty minutes later, Cost returned home and read the message. Since Kimminau had phrased his message in the present tense, Cost reasonably, but mistakenly, concluded that the liquidation had been executed around the same time as the e-mail, which would have been 45 minutes after he had personally delivered the check to Global Futures.

Understandably, Cost was upset, since he believed that Global Futures had recklessly disregarded what he considered to be a diligent, hands-on effort to keep his account adequately margined. Cost sent a series of e-mails to Kimminau which coupled a request that Global Futures buy back the position with a demand that Global Futures credit his account \$1,000. By this time the CBOT floor trading session had closed, but Globex and Cost’s bank were still open. In response, Kimminau and Goscenski sent separate e-mails. Since Cost’s message contained a demand for an adjustment, Kimminau treated it as a compliance issue, rather than an instruction

