

Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

4. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. §13a-1 (2006), in that certain of the acts and practices alleged in the Complaint for Injunctive and Other Equitable Relief and Civil Monetary Penalties Under the Commodity Exchange Act occurred in this District.

5. Waives:

- (a) any and all claims that he may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1 et seq. (2008), relating to, or arising from, this action;
- (b) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act, 1996 HR 3136, Pub. L. 104-121, §§ 231- 223, 110 Stat. 862-63 (1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007), relating to, or arising from, this action;
- (c) 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
- (d) any and all rights of appeal from this action.

6. Neither admits nor denies the allegations of the Complaint or the findings of fact and conclusions of law in this Consent Order, except as to jurisdiction and venue, which he admits. However, Lee agrees and intends that all of the allegations of the Complaint and all the Findings and Conclusions of Law made by this Court and contained in Part II of this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of: a) any current or subsequent bankruptcy proceeding filed by, or on behalf of, or

against him; b) a proceeding to enforce this Consent Order; and/or c) any proceeding pursuant to Section 8a of the Act, 7 U.S.C. § 12a(1), and/or Part 3 of the Regulations, 17 C.F.R. §§ 3.1 *et seq.*

7. Agrees to provide immediate notice to the CFTC of any bankruptcy filed by, on behalf of, or against him in the manner required by Part III.D.42. of this Order.

8. Agrees that no provision of this Order shall in any way limit or impair the ability of any person to seek any legal or equitable remedy against Lee or any other person in any other proceeding.

9. Agrees that neither he nor any of his agents, servants, employees, contractors or attorneys 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 or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Lee's: i) testimonial obligations; or ii) right to take legal positions contrary to the finds of fact and conclusions of law herein in other proceedings to which the Commission is not a party. Lee shall take all necessary steps to ensure that all of his agents, servants, employees or attorneys under his actual or constructive authority or control understand and comply with this agreement.

10. Agrees to cooperate with Commission staff in the continuing litigation of this matter against any defendant not a party to this Order. As part of such cooperation, Lee agrees, subject to all applicable privileges, to comply fully, promptly and truthfully to any inquires or requests for information or testimony, including but not limited to, testifying completely and truthfully at any trial or hearing in this action subject to the provisions of subparagraph 9, above, or producing written statements or trial declarations to the Commission related to any trial of the subject matter of this proceeding.

11. Affirms that he 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.

12. Consents to the continued jurisdiction of this Court for any purpose relevant to this action, even if Lee now or in the future resides outside the jurisdiction.

II. FINDINGS AND CONCLUSIONS

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law, and a permanent injunction, civil monetary penalty and ancillary equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), as set forth herein.

A. Jurisdiction and Venue

13. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person, or, to enforce compliance with the Act, whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order there under.

14. Venue properly lies with the Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e)(2006), because Lee transacted business, among other places, in this district, and certain of the transactions, acts, practices, and courses of business in violation of the Act have occurred, among other places, within this district.

B. Parties to this Consent Order

15. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the

provisions of the Act, 7 U.S.C. §§ 1 *et seq.* (2006), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.* (2008).

16. Defendant David Lee is an individual residing in New Jersey. Lee was a natural gas trader for the Bank of Montreal (“BMO”) from approximately March 2000 until April 2007. Lee’s place of employment while at BMO was 3 Times Square Plaza New York, New York 10036. While employed at BMO, Lee earned a base salary, and was eligible for a discretionary bonus based, in part, upon the profitability of his trading activities.

C. Findings of Fact

17. As BMO’s natural gas trader, Lee traded, *i.e.*, bought and sold, natural gas contracts, including futures and options contracts on the New York Mercantile Exchange (“NYMEX”).

18. Lee entered into natural gas option contracts on the NYMEX, a trading facility within the jurisdiction of the Commission. A substantial amount of the natural gas options contracts Lee traded were either American-style or European-style natural gas options contracts, both of which are “exchange-traded and cleared” options on the NYMEX.

19. One of Lee’s responsibilities as a natural gas trader was to assign a value to his open positions. Lee performed this task by “marking” – or assigning a value to – his open option positions. To perform this task, Lee used a mathematical model and assessed current market conditions. In assigning a value to his option positions, Lee personally determined the implied volatilities for the options contracts in which he held an open position.

20. Lee knowingly mis-marked certain natural gas options, including those entered into on the NYMEX. Specifically, Lee knowingly input inaccurate implied volatility values into his options pricing model for various maturity dates and strike prices within those maturity dates.

The effect of Lee's mis-marking resulted in overvaluation of certain natural gas options, including ones traded on the NYMEX. Lee inflated the value of his book so that it would appear to BMO that his trading was more profitable than it was in reality.

21. In addition to mis-marking, Lee also mis-valued certain natural gas options, including those entered into on the NYMEX. Specifically, starting in October 2006 and ending in early March 2007, Lee started executing a paired options trade. Lee acquired a large number of exchange-traded natural gas options contracts in the paired trades. Because the paired trades were highly illiquid and the pricing model used by Lee valued the options at a higher dollar value than the traded price of the natural gas options, the correct procedure was for Lee to take a substantial and appropriate holdback with respect to these trades. Lee did not do so and deceived BMO as a result of this failure.

22. By inflating the value of his book as set forth herein, Lee generated a larger bonus for himself and also hid losses he had incurred as a result of his trading.

23. BMO possessed certain procedures to verify the value of its traders' exchange traded and over-the-counter positions on a bi-monthly basis, including Lee's. This was known as the independent price verification ("IPV") process. The intended goal of this process was to ensure that trader prices used to value BMO's trading books are reasonably in line with market prices quoted by external sources.

24. In addition to the IPV process, BMO possessed certain procedures to calibrate the options pricing model its traders employed in valuing their option positions. This was known as the "volatility skew verification" process, or the "VSV process." In order to verify the skews utilized in its traders' options model, BMO's Market Risk Division required BMO traders to collect from brokers price quotes between the brokers and other market participants,

memorialized in instant messages. The intended goal of this process was to ensure that skews used to value BMO's trading books were reasonably in line with other market participants' skews. BMO traders, including Lee, were required to collect from brokers quotes from market participants, other than BMO, in instant messages and maintain them in electronic files for use by BMO's Market Risk Division.

25. Lee and several brokers knowingly deceived and defrauded BMO employees who verified the value of Lee's natural gas book. Specifically, before BMO employees performed the mid-month or end of month (month-end) IPV process, Lee created a series of fabricated bid/offer quotes (a pair of prices) for various at-the-money natural gas option positions that were used by BMO's back office to verify the value of his natural gas options positions.

26. After creating these fabricated quotes, Lee transmitted them to brokers who agreed to both (1) transmit Lee's bid/offer quotes to BMO employees who were responsible for independently verifying Lee's valuations, i.e., employees involved in the IPV process, and (2) portray Lee's bid/offer quotes as their own professional view of the current bid/offer spread they observed in the market ("broker bid/offer quotes"). The BMO employees responsible for verifying Lee's valuation of his book sought, and believed they had received, brokers' independent views of the current broker bid/offer quotes available in the natural gas options market.

27. Lee's purpose in creating the fabricated broker bid/offer quotes was to make it appear as if independent market information corroborated his daily mark-to-model valuations.

28. The fabricated broker bid/offer quotes made it appear as if independent market information corroborated Lee's daily mark-to-model valuations of his open option positions. Since BMO personnel relied upon the independence of such broker quotes, they used these

quotes to verify Lee's valuation of his natural gas book and therefore believed Lee's trading to be profitable. Had BMO personnel known that the broker bid/offer quotes were actually Lee's, as opposed to the brokers' independent assessment of the bid/offer quotes available in the market, they would have used different sources to verify Lee's valuation of his natural gas book. As a result, the brokers' fraud, deceit, or false reports enabled Lee to continue to enter into natural gas option transactions for several years and to continue to mis-mark his natural gas book.

D. Conclusions of Law

29. Section 4c(b) of the Act, 7 U.S.C. § 6c(b), makes it unlawful for any person to enter into or confirm the execution of any transaction involving any commodity regulated under this Act that is of the character of, or is commonly known to the trade as an option, bid, offer, put or call contrary to any rule, regulation, or order of the Commission, prohibiting such transaction or allowing such transaction under such terms and conditions as the Commission shall prescribe.

30. Pursuant to Section 4c(b) of the Act, the Commission promulgated Regulation 33.10, 17 C.F.R. § 33.10, which relates to options entered into on a trading facility and provides that it shall be unlawful for any person directly or indirectly, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction, to:

- a) cheat or defraud or attempt to cheat or defraud any other person;
- b) make or cause to be made to any other person any false report or statement hereof or cause to be entered for any person any false record thereof; or
- c) deceive or attempt to deceive any other person by any means whatsoever.

31. By the conduct described in paragraphs 17 through 28 above, Lee violated Section 4c(b) of the Act, and Regulations 33.10(a), (b) and (c).

32. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Lee will continue to engage in the acts and practices alleged in the Complaint and in similar acts and practices in violation of the Act and Regulations.

**III. ORDER FOR PERMANENT INJUNCTION,
CIVIL MONETARY PENALTY AND ANCILLARY EQUITABLE RELIEF**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

A. Permanent Injunction

33. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), Lee is permanently restrained, enjoined, and prohibited from, in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction on the NYMEX or any other commodities exchange or market over which the CFTC has jurisdiction:

- A. cheating or defrauding or attempting to cheat or defraud any other person;
- B. making or causing to be made to any other person any false report or statement thereof or causing to be entered for any person any false record thereof; and
- C. deceiving or attempting to deceive any other person by any means whatsoever,

in violation of Section 4c(b) of the Act, 7 U.S.C. § 4c(b), and Regulation 33.10, 17 C.F.R. § 33.10.

34. Lee is further permanently restrained, enjoined and prohibited from directly or indirectly engaging in any activity related to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) ("commodity interest"), on the NYMEX or any other commodities exchange or market over which the CFTC has jurisdiction, including but not limited to, the following:

- A. Trading on or subject to the rules of any registered entity, at that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29);
- B. Engaging in, controlling, or directing the trading of any commodity interest accounts, on his own behalf or for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- C. Soliciting, accepting or placing orders, giving advice or price quotations or other information in connection with the purchase or sale of commodity interests, for himself and others;
- D. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging 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) (2009), or acting as a principal, agent or officer or employee of any person registered, required to be registered or exempted from registration with the Commission unless such exemption is pursuant to Regulation 4.14(a)(9), 17 C.F.R. 4.14(a)(9) (2009); and
- E. Otherwise engaging in any business activities related to commodity interest trading.

35. The injunctive provisions of this Order shall be binding upon Lee, upon any person who acts in the capacity of agent, employee, attorney, successor and/or assign of Lee and upon any person who receives actual notice of this Order, by personal service or otherwise, insofar as he or she is acting in active concert or participation with Lee.

B. Civil Monetary Penalty

36. Lee shall pay to the Commission a civil monetary penalty in the amount of five hundred thousand dollars (\$500,000), plus post-judgment interest. However, Lee's payment of criminal restitution as part of the criminal sentence he receives relating to the same operative facts, shall have priority over payment of the civil monetary penalty imposed herein.

37. Post-judgment interest shall accrue beginning on 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.

38. Lee shall pay the civil monetary penalty 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 address below:

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

If payment is to be made by electronic funds transfer, Lee shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Lee shall accompany payment of the penalty with a cover letter that identifies himself as payor and the name and docket number of the proceedings. Lee shall simultaneously transmit copies of the cover letter and the form of payment to the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and the Chief, Office of Cooperative Enforcement, at the same address.

39. Any acceptance by the Commission of partial payment of Lee's civil monetary penalty shall not be deemed a waiver of the respective requirement to make further payments pursuant to this Consent Order or a waiver of the Commission's right to seek to compel payment of any remaining balance.

C. Cooperation

40. Lee shall continue to cooperate fully with the Commission and any government agency seeking to enforce the civil monetary penalty and ancillary relief provisions of this

Consent Order by providing any requested information relating to his financial status, including, but not limited to, income and earnings, assets, financial statements, asset transfers, and tax returns.

41. Lee shall continue cooperate with Commission staff in the continuing litigation of this matter against any defendant not a party to this Order. As part of such cooperation, Lee shall, subject to all applicable privileges, comply fully, promptly and truthfully to any inquires or requests for information or testimony, including but not limited to, testifying completely and truthfully at any trial or hearing in this action subject to the provisions of subparagraph 9, above, or producing written statements or trial declarations to the Commission related to any trial of the subject matter of this proceeding.

D. Miscellaneous Provisions

42. Notices: All notices required to be given by any provision in this Order shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

Director
Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581

Notice to Defendant:

Timothy P. Kebbe
Brunelle & Hadjikow, P.C.
One Whitehall Street, Suite 1825
New York, NY 10004
Tele: (212) 809-9100
Fax: (212) 809-3219
TKebbe@brunellelaw.com

-and-

Amy Walsh
Kostelanetz & Fink, LLP
7 World Trade Center
250 Greenwich Street, 34th Floor
New York, NY 10007
Tele: (212) 808-8100
Fax: (212) 808-8108
awalsh@kflaw.com

In the event that Lee changes his residential or business telephone number(s) and/or address(es) at any time, he shall provide written notice of the new number(s) and/or address(es) to the Commission within twenty (20) calendar days thereof.

43. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by written order of this Court.

44. Invalidation: If any provision of this Order, or the application of any provisions or circumstances is held invalid, the remainder of the Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

45. Waiver: The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed or construed as a further or continuing waiver of a breach of any other provision of this Order.

46. Counterparts and Facsimile Execution. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by facsimile or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Agreement that is delivered by facsimile, electronic mail or otherwise shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Agreement.

47. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with this Order and for all other purposes related to this action.

CONSENTED TO AND APPROVED BY:

Dated: 8-10-09

David Lee
David Lee

Dated: 8-10-09

Timothy P. Kebbe
Timothy P. Kebbe
Brunelle & Hadjilow, P.C.
120 Broadway, Suite 1010
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Dated: 11/3/09

Christine M. Ryall
Christine M. Ryall
Commodity Futures Trading Commission
1155 21st Street NW
Washington, DC 20581
(202) 418-5318
(202) 418-5523 (facsimile)
cryall@cftc.gov

Attorney for Plaintiff

IT IS SO ORDERED.

DATED: NOV 04 2009

George B. Daniels
GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE
HON. GEORGE B. DANIELS

THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON _____