

UNITED STATES OF AMERICA  
BEFORE THE  
COMMODITY FUTURES TRADING COMMISSION

<p style="margin: 0;">In the Matter of:</p> <p style="margin: 0;">KEVIN M. McCORMICK</p> <p style="margin: 0; text-align: center;">Respondent.</p>	<p>)</p>	<p style="margin: 0;">CFTC Docket No. <u>10-20</u></p> <p style="margin: 0;"><b>ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS</b></p>
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I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Kevin M. McCormick (“McCormick” or “Respondent”) has violated Section 9(a)(4) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 13(a)(4) (2006). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether McCormick has engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of this administrative proceeding, McCormick has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings herein, McCormick acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”).<sup>1</sup>

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<sup>1</sup> McCormick consents to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that McCormick does not consent to the use of the Offer, or the findings in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does McCormick consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding.

### III.

The Commission finds the following:

#### A. SUMMARY

During the period September 7, 2004 through October 18, 2004 (the “relevant period”), McCormick, a member of the Chicago Mercantile Exchange (“CME”) and a floor trader in the Standard & Poor’s 500 Stock Price Index (“S&P”) futures pit, knowingly and willfully recorded on his trading cards false or fictitious commodity trades and submitted the trading cards for clearing to Spike Trading Inc. (“Spike”), a registered introducing broker (“IB”), FC Stone Inc. (“Stone”), a registered futures commission merchant (“FCM”), and the CME, a board of trade that is a designated contract market. The trading cards that McCormick submitted for clearing contained materially false representations concerning either the price and/or quantity of his S&P trades. McCormick submitted these false trading cards in order to increase the reported equity in his account and conceal his trading losses from the CME. By virtue of the foregoing fraudulent conduct, McCormick violated Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2006), which, in relevant part, prohibits any person from using or making any false writing or document to a registered entity or board of trade, knowing the same to contain any false, fictitious, or fraudulent statement or entry.<sup>2</sup>

#### B. RESPONDENT

Kevin M. McCormick is 46 years old and resides in Orland Park, Illinois 60467. He was registered with the Commission as a floor trader from May 25, 2000 through October 29, 2004. McCormick became a member of the CME in 2000 and was permanently barred from CME membership as of April 15, 2005.

#### C. FACTS

During the relevant period, McCormick traded S&P and E-Mini S&P futures contracts on the floor of the CME for his own account. McCormick leased an Index and Options membership (“IOM”) and maintained his trading account at Spike, a division of Stone.

From September 10, 2004 through October 18, 2004, McCormick traded for his own account at Spike while the account was in deficit. In order to inflate the reported equity in his trading account and conceal his actual debit balance status from the CME, McCormick made

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<sup>2</sup> McCormick was also subject to CME disciplinary and federal criminal actions based upon this and related misconduct. On July 5, 2005, a panel of the CME’s Business Conduct Committee (“BCC”) found that McCormick violated CME rules. The BCC imposed sanctions, including restitution to Stone in the amount of \$386,577.46, which equals his debit balance on October 19, 2004, and a penalty in the amount of \$1 million. On July 9, 2008, McCormick was indicted, and on June 1, 2010, he entered a plea of guilty for making and using false writings and documents, in violation of Section 9(a)(4) of the Act. *See United States v. McCormick*, Case No. 08 CR 539 (N.D. Ill.). McCormick’s sentencing is scheduled for November 2010.

entries on his trading cards that misrepresented the price and/or quantity of his S&P trades. McCormick submitted these false and fictitious trading cards for clearing, knowing that the reported transactions created the appearance that he had realized trading profits. As a result, he was able to temporarily inflate the reported equity in his trading account so that it showed a positive balance. When these false or fictitious trades were subsequently reconciled as out-trades or deleted from his account, McCormick falsified new trading cards to further conceal his actual debit balance status. McCormick's false reporting allowed him to continue trading without posting margin and placed his clearing firm at risk.

During the relevant period, McCormick recorded false entries on at least fourteen trading cards and submitted those cards for clearing to Spike, Stone and the CME. Specifically, McCormick recorded entries that: i) misrepresented both the price and quantity of his commodity transactions on at least 7 trading cards; ii) misrepresented the quantity of his commodity transactions on at least 6 trading cards; and iii) misrepresented the price of his commodity transaction on at least one trading card.

McCormick's false reporting scheme continued for approximately six weeks. When McCormick's trades were cleared on October 19, 2004, his account had a significant short position of 167 December S&P contracts which, when liquidated, resulted in his account having a debit balance of approximately \$386,000. McCormick's clearing firm, Spike, had to cover McCormick's trading losses.

#### **D. LEGAL DISCUSSION**

Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4), prohibits any person from using or making any false writing or document to a registered entity or board of trade, knowing the same to contain any false, fictitious or fraudulent statement or entry. *See CFTC v. ISB Clearing Corp., Inc.*, 2006 WL 5266749 \*2 (S.D. N.Y. 2006) (defendant violated Section 9(a)(4) of the Act by knowingly reporting in at least 17 weekly forex reports with National Futures Association that there were customer funds on deposit with a specific financial institution, when, in fact, those funds were not on deposit with the financial institution). Section 1a(29) of the Act, 7 U.S.C. § 1a(29), in relevant part, includes within the definition of "registered entity" a board of trade designated as a contract market.

In the instant case, McCormick knowingly made entries on his trading cards concerning the price and/or quantity of his S&P trades, which were subsequently determined to be false by the CME, and submitted these trading cards to the CME, a registered entity and board of trade. Because McCormick's false entries were not isolated but, rather continued over a six-week period, the evidence shows that McCormick knowingly and willfully made and submitted the false entries. By so doing, McCormick was able to continue trading without posting the requisite margin.

#### **IV. FINDING OF VIOLATIONS**

Based on the foregoing, the Commission finds that McCormick violated Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2006).

## V. OFFER OF SETTLEMENT

McCormick has submitted the Offer in which he, without admitting or denying the findings herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order;
- C. Waives: the filing and service of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; any and all objections to the participation by any member of the Commission's staff in consideration of the Offer; 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 Commission's Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2010), relating to, or arising from, this proceeding; any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, , Pub. L. 104-121, §§ 201-253, 110 Stat. 857, 857-868 (1996), as amended by Pub. L. 110-28, § 8302, 121 Stat. 204-205 (2007), relating to or arising from this proceeding; and 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;
- D. Stipulates that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which the Respondent has consented; and
- E. Consents, solely on the basis of the Offer, to entry of this Order that:
  - 1. makes findings by the Commission that McCormick violated Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2006).
  - 2. orders McCormick to cease and desist from violating Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2006);
  - 3. orders that McCormick be permanently prohibited from trading on or subject to the rules of any registered entity, as that term is defined by Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006), and that all such registered entities shall refuse McCormick privileges, beginning on the third Monday after the date of entry of this Order; and
  - 4. orders McCormick to comply with the undertakings consented to in his Offer and set forth below in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Respondent's Offer.

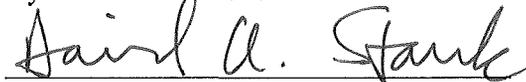
## VI. ORDER

### Accordingly, IT IS HEREBY ORDERED THAT:

- A. McCormick shall cease and desist from violating Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2006);
- B. McCormick shall be permanently prohibited from trading on or subject to the rules of any registered entity, as that term is defined by Section 1a(29) of the Act, 7 U.S.C. § 1a(29) (2006), and all such registered entities shall refuse McCormick trading privileges, beginning on the third Monday after the date of entry of this Order;
- C. McCormick shall comply with the following undertakings set forth in the Offer:
  1. McCormick 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 Commission Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010), or act as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, except as provided for in Commission Regulation 4.14(a)(9); and
  2. Neither McCormick nor any of his employees, agents or representatives shall take any action or make any public statement denying, directly or indirectly, any finding in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect McCormick's: (i) testimonial obligations; or (ii) right to take appropriate legal positions in other proceedings to which the Commission is not a party. McCormick shall undertake all steps necessary to ensure that all of his employees, agents and representatives under his authority and/or actual or constructive control understand and comply with this undertaking.

**The provisions of the Order shall be effective as of this date.**

By the Commission.



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

Dated: September 30, 2010