



### III.

The Commission finds the following:

#### A. Summary

On November 29, 2017, Respondent held a net long position in the Chicago Board of Trade's ("CBOT") December 2017 soft red winter wheat ("SRW") futures contract in excess of the spot month speculative position limit established by the Commission, in violation of Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2012), and Regulation 150.2, 17 C.F.R. § 150.2 (2018).

#### B. Respondent

**Elephas Investment Management Limited** is a Hong Kong based hedge fund. It is not registered with the Commission.

#### C. Facts

Regulation 150.2 sets speculative position limits that any person may hold or control for CBOT SRW futures contracts, among other agricultural futures contracts, including limits for the number of contracts for the spot month, any single month and all months of trading. Under Regulation 150.2, the spot month position limit for SRW futures is 600 contracts.

At the close of business on November 29, 2017, the first day of the spot month, Respondent held an open position of 1,680 futures equivalent net long contracts. Respondent's position thus exceeded the 600-contact spot limit set forth in Regulation 150.2 by 1,080 contracts.

On November 30, 2017, Respondent was stopped on a portion of its position and was assigned 1,185 wheat certificates via the delivery process, bringing it to a futures equivalent net long of 495 contracts—i.e., 105 contracts under the 600-contract spot limit. Respondent then rolled its remaining contracts by selling December 2017/March 2018 wheat spreads thereby moving its position to the March 2018 wheat contract.

### IV.

#### A. Legal Discussion

Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2012), makes it "unlawful for any person directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery . . . in excess of any position limit fixed by the Commission for or with respect to such commodity. . . ." Regulation 150.2, 17 C.F.R. § 150.2 (2018), establishes speculative position limits in certain futures contracts, and states, in relevant part, "no person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of," the 600 spot month speculative position limit in CBOT SRW futures. *See*

also Revision of Federal Speculative Position Limits, 70 Fed. Reg. 24,705, 24,707 (May 11, 2005) (establishing 600-contract spot limit effective June 10, 2005).

By holding positions exceeding the limits fixed by Regulation 150.2, Respondent violated Section 4a(b)(2) of the Act, and Regulation 150.2. The Commission does not need to establish scienter—i.e., proof of intent to exceed the applicable speculative position limit—in order to prove a violation of the Commission’s speculative position limit provisions. *See CFTC v. Hunt*, 591 F.2d 1211, 1218 (7th Cir. 1979); *cf. Saberi v. CFTC*, 488 F.3d 1207, 1212 n.4 (9th Cir. 2007). The Act “unambiguously imposes liability” for violations of speculative position limits. *Saberi*, 488 F.3d at 1212 (rejecting trader’s contention that the Division was required to prove that he intended to violate the speculative position limits in frozen pork bellies futures set forth in Chicago Mercantile Exchange Rule 8032.E) (*citing Hunt*, 591 F.2d at 1218).

**V.**

**FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that Respondent violated Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2012) and Regulation 150.2, 17 C.F.R. § 150.2 (2018).

**VI.**

**OFFER OF SETTLEMENT**

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions 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 and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
  - 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 the Commission’s consideration of the Offer;

6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012), and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this proceeding;
  7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-53, tit. II, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2812 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
  8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondent violated Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2012) and Regulation 150.2, 17 C.F.R. § 150.2 (2018);
  2. Orders Respondent to cease and desist from violating Section 4a(b)(2) of the Act, and Regulation 150.2;
  3. Orders Respondent to pay a civil monetary penalty in the amount of one hundred sixty thousand dollars (\$160,000), plus post-judgment interest; and
  4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

Upon consideration, the Commission has determined to accept the Offer. In accepting the Offer, the Commission recognizes Respondent is paying \$166,590 to the CME Group for the benefit it received in reduced losses from liquidating its overage through the delivery process, which the Commission considered in determining the appropriate resolution of the matter.

## VII.

### ORDER

#### Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2012) and Commission Regulation 150.2, 17 C.F.R. § 150.2 (2018).

- B. Respondent shall pay a civil monetary penalty in the amount of one hundred sixty thousand dollars (\$160,000) (“CMP Obligation”), plus post-judgment interest, within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation 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 (2012).

Respondent shall pay the CMP Obligation 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, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326  
Commodity Futures Trading Commission  
Division of Enforcement  
6500 S. MacArthur Blvd.  
HQ Room 181  
Oklahoma City, OK 73169  
(405) 954-6569 office  
(405) 954-1620 fax  
9-AMC-AR-CFTC@faa.gov

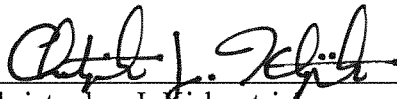
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent 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 the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control, shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions 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 Respondent’s: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

2. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
  
3. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Consent Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.

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

By the Commission.



\_\_\_\_\_  
Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: July 2, 2019