

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**



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In the Matter of: )  
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Corey D. Flaum, )  
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Respondent. )  
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CFTC Docket No. 19-15

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO  
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT,  
MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

**I.**

**INTRODUCTION**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or around 2007 until in or around 2016 (“Relevant Period”), Corey D. Flaum (“Flaum”) violated Section 9(a)(2) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 13(a)(2) (2012); for conduct occurring on or after July 16, 2011, Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012); and, for conduct occurring on or after August 15, 2011, Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Commission Regulation (“Regulation”) 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2018). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Flaum engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Flaum has submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept. Flaum admits the facts set forth below, acknowledges that his conduct violated the Act and Regulations, admits the Commission’s jurisdiction over him and the subject matter of these proceedings, consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.

**II.**  
**FINDINGS**

The Commission finds the following:

**A. Summary**

During the Relevant Period, while employed as a precious metals trader at a U.S. financial institution headquartered in New York (“Bank A”), and subsequently at the New York office of a Canadian financial institution headquartered in Toronto, Canada (together, the “Banks”), Flaum and others at the Banks engaged in manipulative and deceptive conduct by engaging in the practice of “spoofing” (bidding or offering with the intent to cancel the bid or offer before execution) while placing orders for futures contracts on a registered entity.

Flaum engaged in a pattern of spoofing in the precious metals futures market. Specifically, Flaum placed orders to buy or sell futures contracts with the intent to cancel them before execution, thereby intentionally sending false signals of increased buying or selling interest designed to deceive market participants into executing against other orders he wanted filled. Flaum engaged in this conduct with the intent to manipulate market prices. By virtue of this conduct, Flaum engaged in attempted manipulation in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012); for conduct occurring on or after July 16, 2011, engaged in spoofing in violation of Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012); and for conduct occurring on or after August 15, 2011, engaged in the use or attempted use of a manipulative or deceptive device in violation of 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180(a)(1), (3) (2018).

\* \* \* \* \*

In accepting the Offer, the Commission recognizes Flaum’s entry into a formal cooperation agreement (“Cooperation Agreement”) with the Division of Enforcement (“Division”), which sets forth the terms of his agreement to cooperate with the Commission and the Division in connection with any investigation, litigation, or proceeding to which the Commission is a party relating to the subject matter of this Order and/or as described in the Cooperation Agreement (“Proceedings”).

**B. Respondent**

**Corey D. Flaum** is a former trader who resides in Mount Kisco, New York. During the Relevant Period, Flaum was a trader at the Banks. For several months in 2018, subsequent to the Relevant Period, Flaum was registered with the Commission as an associated person of a registered introducing broker.

### C. Facts

During the Relevant Period, Flaum engaged in trading on behalf of the Banks in futures markets. Flaum traded in futures contracts while employed at the Banks, including precious metals such as gold, silver, platinum, and palladium.<sup>1</sup>

During the Relevant Period, Flaum engaged in a pattern of spoofing in the precious metals markets while placing orders for, and trading futures contracts through, accounts owned by the Banks. Flaum placed bids or offers for futures contracts with the intent to cancel those orders before their execution. Flaum learned the manipulative and deceptive trading strategy of spoofing from observing a more senior trader at Bank A, whom he saw engaging in spoofing on a frequent basis. Subsequently, he observed other precious metals traders at the Banks engaging in spoofing.

Typically, Flaum conducted his spoofing as follows: on one side of the market he placed at least one non-aggressive order (“Genuine Order(s)”), and on the opposite side of the market from the Genuine Order, he placed one or more fully-visible non-aggressive order(s) with the intent to cancel such order(s) before execution (“Spoof Order(s)”).

Flaum and others at the Banks engaged in spoofing to induce other market participants to trade against their Genuine Orders at prices, quantities, and times that they otherwise likely would not have traded. Flaum and others at the Banks entered Spoof Orders to intentionally send market participants a false signal of greater buying or selling interest thereby creating the impression that the price would likely rise or decline respectively and deceive market participants into transacting against the Genuine Orders at least in part for the benefit of the Banks.

The following example from Flaum’s trading illustrates how he engaged in his spoofing conduct.

#### **December 31, 2015 – Trading the February 2016 COMEX Gold Futures Contract**

On December 31, 2015 at 11:39:10.679 AM Central Time, Flaum placed an offer to sell five lots of the February 2016 expiry of the COMEX Gold Futures (“GCG6”) contract at a price of \$1,060.40, which was the best-offer level (“Genuine Gold Offer”). Approximately one minute later, at 11:40:33.666, Flaum placed an order to buy 245 lots of GCG6 at a price of \$1,059.90, which was at the fifth best bid level (“Spoofing Gold Bid”). One millisecond later, at 11:40:33.667, Flaum’s Genuine Gold Offer was fully filled by other market participants. Approximately one second later, at 11:40:34.790, Flaum canceled his 245-lot Spoofing Gold Bid.

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<sup>1</sup> The futures contracts referenced herein are all traded on exchanges owned and operated by CME Group, Inc. (“CME”).

### III.

#### LEGAL DISCUSSION

##### **A. Spoofing in Violation of Section 4c(a)(5)(C) of the Act**

For conduct occurring on or after July 16, 2011, Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012), makes it unlawful for “any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that . . . is, is of the character of, or is commonly known to the trade as, ‘spoofing’ (bidding or offering with the intent to cancel the bid or offer before execution).” *See United States v. Coscia*, 866 F.3d 782, 792-93 (7th Cir. 2017), *cert. denied*, 138 S. Ct. 1989 (2018).

As described above, between July 16, 2011 and the end of the Relevant Period, Flaum entered bids or offers on a registered entity, specifically CME’s exchanges, with the intent to cancel the bids or offers before execution in violation of Section 4c(a)(5)(C) of the Act. *See, e.g., CFTC v. Oystacher*, 203 F. Supp. 3d 934, 942 (N.D. Ill. 2016) (denying motion for judgment on the pleadings, holding that allegations of placing “both bids and offers with the intent to cancel those bids or offers before execution” constitutes “trading behavior [that] falls within the Spoofing Statute’s defined prohibition”).

##### **B. Attempted Price Manipulation and Use of a Manipulative and Deceptive Device in Violation of Sections 6(c)(1) and 9(a)(2) of the Act and Regulation 180.1(a)**

Under Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012), it is unlawful for “[a]ny person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.”

For conduct occurring on or after August 15, 2011, it is unlawful under Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2018), to, directly or indirectly, in connection with any contract for future delivery on or subject to the rules of a registered entity, intentionally or recklessly “(1) [u]se or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud”; or “(3) [e]ngage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person.”

As described above, Flaum attempted during the Relevant Period to manipulate the price of precious metals futures contracts and, between August 15, 2011 and the end of the Relevant Period, employed a manipulative and deceptive scheme wherein he entered Spoof Orders to intentionally send market participants a false signal of greater buying or selling interest, thereby creating the impression that market prices would likely rise or decline, and deceiving market participants into transacting against his Genuine Orders. *See, e.g., In re Merrill Lynch Commodities, Inc.*, CFTC No. 19-07, 2019 WL 2725774, at \*3-4 (June 25, 2019) (consent order) (finding that spoofing constituted attempted price manipulation under Section 9(a)(2)); *In re McVean Trading*, CFTC No. 17-15, 2017 WL 2729956, at \*11 (July 21, 2017) (consent order) (finding that “injecting false information into the marketplace that ‘portrayed a false appearance of wide investor interest’” was a manipulative or deceptive device under Section 6(c)(1) and

Regulation 180.1 (quoting *SEC v. Commonwealth Chem. Secs., Inc.*, 410 F. Supp. 1002, 1013 (S.D.N.Y. 1976), *aff'd in part and modified in part on other grounds*, 574 F.2d 90 (2d Cir. 1978)); *cf. SEC v. Lek Sec. Corp.*, 276 F. Supp. 3d 49, 58-60 (S.D.N.Y. Aug. 25, 2017) (noting that “trading engineered to stimulate demand” may inject false pricing signals into the market and thus constitute manipulation under the securities laws (quoting *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 101 (2d Cir. 2007))). Through this misconduct, Flaum violated Section 9(a)(2) of the Act, and, for conduct occurring on or after August 15, 2011, violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3).

#### IV.

### FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Flaum violated Sections 4c(a)(5)(C), 6(c)(1), and 9(a)(2) of the Act, 7 U.S.C. §§ 6c(a)(5)(C), 9(1), 13(a)(2) (2012), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2018).

#### V.

### OFFER OF SETTLEMENT

Flaum has submitted the Offer in which he:

- A. Acknowledges 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. Admits to all of the findings made in this Order;
- D. 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 defense based on the statute of limitations applicable to any charges brought in connection with this Order;
  6. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;

7. Any and all claims that he 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;
  8. Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201-253, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
  9. 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;
- E. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Flaum has consented in the Offer;
- F. Consents to additional proceedings to determine what, if any, sanctions may be assessed against him. In connection with such additional proceedings, he further consents that: (a) the findings of fact in Section II of this Order shall be accepted as and deemed true by the Presiding Officer; (b) Flaum will be precluded from arguing that he did not violate the federal laws as described in Sections III and IV of this Order; and (c) he may not challenge the validity of his consents and agreements in the Offer or this Order; and
- G. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Flaum violated Sections 4c(a)(5)(C), 6(c)(1), and 9(a)(2) of the Act, 7 U.S.C. §§ 6c(a)(5)(C), 9(1), 13(a)(2) (2012), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2018);
  2. Orders Flaum to cease and desist from violating Sections 4c(a)(5)(C), 6(c)(1), and 9(a)(2) of the Act and Regulation 180.1(a)(1) and (3); and
  3. Orders Flaum to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

## VI.

### ORDER

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

- A. Flaum shall cease and desist from violating Sections 4c(a)(5)(C), 6(c)(1), and 9(a)(2) of the Act, 7 U.S.C. §§ 6c(a)(5)(C), 9(1), 13(a)(2) (2012), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2018).

B. The Commission reserves its determination as to sanctions against Flaum at this time based upon his cooperation in a Commission investigation and related proceedings, pursuant to the terms of the Cooperation Agreement, and his undertaking to continue to cooperate, as set forth in this Order in Section VI.C.2 below. The determination of what, if any, sanctions may be assessed against him will be made at a public hearing for the purpose of taking evidence and hearing arguments on the issue in accordance with the Commission's Rules of Practice, 17 C.F.R. pt. 10 (2018), at a time and place to be fixed as provided in Regulation 10.61, 17 C.F.R. § 10.61 (2018), except that in the additional proceedings: (a) the findings of fact in Section II of this Order shall be accepted as and deemed true by the Presiding Officer; (b) Flaum will be precluded from arguing that he did not violate the federal laws as described in Sections III and IV of this Order; and (c) Flaum may not challenge the validity of his consents and agreements in the Offer or this Order. All post-hearing procedures shall be conducted pursuant to Regulations 10.81-10.107, 17 C.F.R. §§ 10.81-10.107 (2018).

C. Flaum shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: Flaum agrees that neither he nor any of his agents or employees under his 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 Flaum's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Flaum shall comply with this provision, and shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this provision.
2. Cooperation with the Commission: Flaum shall cooperate fully and truthfully with the Commission, including the Division, in any Proceedings. As part of such cooperation, Flaum agrees to:
  - a. preserve and produce to the Commission in a responsive and prompt manner, as requested by Division staff, all relevant non-privileged documents, information, and other materials wherever located, in the appropriate possession, custody, or control of Flaum;
  - b. utilize his knowledge and skill to explain transactions, interpret information and terminology, or identify new and productive lines of inquiry;
  - c. prepare and appear for interviews and testimony at such times and places as requested by Division staff;
  - d. respond completely and truthfully to all inquiries and interviews, when requested to do so by Division staff;

- e. identify and authenticate relevant documents and other evidentiary materials, execute affidavits and/or declarations, and testify completely and truthfully at depositions, trial, and other judicial proceedings, when requested to do so by Division staff;
  - f. enter into tolling agreements, when requested to do so by Division staff, during the period of cooperation;
  - g. waive any defense based on the statute of limitations applicable to any charges brought in connection with any Proceedings;
  - h. consent to procedural matters, when requested to do so by Division staff, in connection with the Proceedings;
  - i. accept service by mail, electronic mail, or facsimile transmission of notices or subpoenas for documents and/or testimony;
  - j. appoint his attorney as agent to receive service of such notices and subpoenas;
  - k. waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules in connection with requests or subpoenas of Division staff; and
  - l. serve by hand delivery or by next-day mail all written notices and correspondence required by or related to the Cooperation Agreement to the Director of the Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Three Lafayette Centre, Washington, DC 20581, unless otherwise directed in writing by Division staff.
3. Change of Address/Phone: Until such time as Flaum satisfies in full his obligations as set forth in the Cooperation Agreement and this Order, Flaum shall provide written notice to the Commission by certified mail of any change to his 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 25, 2019