

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION



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**In the Matter of:** )  
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 **Heraeus Metals New York LLC,** )  
 ) **CFTC Docket No. 19-28**  
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 **Respondent.** )  
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**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 about May 2017 through January 2018 (“Relevant Period”), Heraeus Metals New York LLC (“Respondent” or “Heraeus”) violated Section 4c(a)(5)(C) of the Commodity Exchange Act (“Act”), 7 U.S.C. §6c(a)(5)(C) (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Heraeus 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, Heraeus has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Heraeus 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.<sup>1</sup>

<sup>1</sup> Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

## II. FINDINGS

The Commission finds the following:

### A. SUMMARY

During the Relevant Period, Heraeus, by and through one of its former traders, John Lawrence (“Lawrence”), engaged in numerous instances of the disruptive trading practice known as “spoofing” (i.e., bidding or offering with the intent to cancel the bid or offer before execution) involving silver futures contracts and gold futures contracts traded on the Commodity Exchange (“COMEX”), a futures exchange and designated contract market which is owned and operated by CME Group Inc. (“CME”). This conduct violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

### B. RESPONDENT

**Heraeus Metals New York LLC** is a U.S. affiliate of a global precious metals refiner and fabricator. From September 2014 through February 2018, Heraeus employed Lawrence as a trader. Heraeus has never been registered with the Commission.

### C. FACTS

#### 1. **Spoofing**

Heraeus purchases and sells physical precious metals for a variety of manufacturing and other industrial applications. Heraeus’s customers include its corporate affiliates and third parties that both source physical precious metals from Heraeus and sell excess physical precious metals inventory to Heraeus. As part of this business, Heraeus trades precious metals futures to manage the price risk associated with its physical precious metals transactions. Because Heraeus traded precious metals futures for risk management purposes only, Heraeus restricted its traders’ ability to trade precious metals futures, including during the Relevant Period, by, among other things, limiting the maximum order size its traders could place to twenty lots.

From September 2014 through February 2018, Heraeus employed Lawrence as a trader. Lawrence’s responsibilities at Heraeus included both buying and selling physical precious metals, including silver and gold, as well as trading precious metals futures contracts, including the COMEX silver futures contract and the COMEX gold futures contract.

Beginning in May 2017, Lawrence began placing bids and offers in Heraeus’s trading account for COMEX silver and COMEX gold futures contracts with the intent to cancel those bids and offers before their execution. Lawrence’s trading pattern involved placing on one side of market a relatively small order, typically for one lot, that he wanted to get filled (“Genuine Order”). Lawrence then placed on the opposite side of the market a larger order, typically for twenty lots, the maximum size Heraeus allowed him to place, that he intended to cancel before execution (“Spoofer Order”). Lawrence placed the Spoofer Order knowing that this order would often induce other market participants to fill his Genuine Order. Lawrence then cancelled his

Spoof Order within seconds of placing it, often immediately after he received a fill on his Genuine Order.

Between May 2017 and October 2017, Lawrence engaged in spoofing using this trading pattern on a small number of isolated occasions. Beginning in October 2017, Lawrence intensified his spoofing activity. By January 2018, Lawrence had placed hundreds of Spoof Orders for COMEX silver and COMEX gold futures contracts.

Heraeus suspended Lawrence from trading on or about February 20, 2018, immediately after it discovered Lawrence's spoofing activity. Heraeus terminated Lawrence's employment shortly thereafter.

## **2. Remediation**

Heraeus represents that by April 2018, in addition to its existing risk management and monitoring tools, it had instituted a number of measures to prevent its traders from engaging in spoofing, including daily monitoring and review of all order cancellations and modifications. In addition, Heraeus represents that in March 2018, Heraeus expanded the annual compliance training it gives to all traders to include separate and specific training on the prohibitions against spoofing and other disruptive trading practices under the Act and relevant exchange rules.

### **III. LEGAL DISCUSSION**

#### **A. Spoofing in COMEX Silver and COMEX Gold Futures Contracts, in Violation of Section 4c(a)(5)(C) of the Act**

Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012), makes it unlawful for “[a]ny 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, e.g., United States v. Coscia*, 866 F.3d 782, 792-93 (7th Cir. 2017) (holding that because the Act clearly defines spoofing, it provides adequate notice of prohibited conduct), *cert. denied*, 138 S. Ct. 1989 (2018).

As described above, during the Relevant Period, Heraeus, by and through the acts of Lawrence, placed bids and offers for futures contracts listed on COMEX, a registered entity, with the intent to cancel those bids and offers before they were executed. By engaging in this conduct, Heraeus violated Section 4c(a)(5)(C) of the Act. *See 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. Heraeus Is Liable for the Acts of Its Agent**

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation (“Regulation”) 1.2, 17 C.F.R. § 1.2 (2019), provide that “[t]he act, omission, or failure of any

official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust.” Pursuant to section 2(a)(1)(B) of the Act and Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g., Rosenthal & Co. v. CFTC*, 802 F.2d 963 966 (7th Cir. 1986); *CFTC v. Byrnes*, 58 F. Supp. 3d 319, 324 (S.D.N.Y. 2014).

Because Lawrence engaged in the spoofing conduct described above within the scope of his employment with Heraeus, Heraeus is liable for Lawrence’s violation of Section 4c(a)(5)(C) of the Act.

#### **IV. FINDINGS OF VIOLATION**

Based on the foregoing, the Commission finds that, during the Relevant Period, Heraeus violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

#### **V. OFFER OF SETTLEMENT**

Heraeus has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- 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. 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 (2019), 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, 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

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 Heraeus has consented in the Offer; and
- 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 Heraeus, by and through the acts of Lawrence, violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012);
  2. Orders Heraeus to cease and desist from violating Section 4c(a)(5)(C) of the Act;
  3. Orders Heraeus to pay a civil monetary penalty in the amount of nine hundred thousand dollars (\$900,000), plus post-judgment interest within ten days of the date of entry of this Order;
  4. Orders Heraeus 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. Heraeus shall cease and desist from violating Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).
- B. Heraeus shall pay a civil monetary penalty in the amount of nine hundred thousand dollars (\$900,000) ("CMP Obligation"), 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).

Heraeus shall pay the CMP Obligation and any post-judgment interest 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, Heraeus shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Heraeus shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondent and the name and docket number of this proceeding. Heraeus 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. Heraeus shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Heraeus agrees that neither it nor any of its 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 Heraeus's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Heraeus shall comply with this agreement, and 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. **Cooperation, in General:** Heraeus shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Heraeus shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.
  3. **Partial Satisfaction:** Heraeus understands and agrees that any acceptance by the Commission of any partial payment of Heraeus'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.
  4. **Change of Address/Phone:** Until such time as Heraeus satisfies in full its CMP Obligation as set forth in this Order, Heraeus 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.

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

Dated: September 16, 2019