

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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5:48 pm, Sep 30, 2019

In the Matter of:)
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Hard Eight Futures, LLC,)
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Respondent.)
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CFTC Docket No. 19-30

**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 March 2014 through March 2015 (“Relevant Period”), Hard Eight Futures, LLC (“Hard Eight” or “Respondent”), by and through the acts of one of its traders, violated Section 4c(a)(5)(C) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6c(a)(5)(C) (2012), Section 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. § 180.1(a)(1), (3) (2018), of the Commission Regulations (“Regulations”). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent 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, Respondent 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, Respondent 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.¹

¹ 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

From March 2014 through March 2015 (“Relevant Period”), Hard Eight, by and through one of its traders, engaged in manipulative or deceptive acts, including “spoofing”—bidding or offering with the intent to cancel the bid or offer before execution—in connection with trading the E-mini S&P 500 futures contract (“E-mini”) on the Chicago Mercantile Exchange (“CME”), a registered entity, in violation of the Act and Regulations.

This conduct violates Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012), which prohibits spoofing, as well as Section 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. § 180.1(a)(1), (3) (2018), which prohibit the use of any manipulative or deceptive device or contrivance in connection with any contract for future delivery on or subject to the rules of a registered entity, here, the CME.

Hard Eight committed these violations by and through Trader A, a partner of, and trader for, Hard Eight. Hard Eight is therefore liable for these violations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2018).

B. RESPONDENT

Hard Eight Futures, LLC is an Illinois limited liability company with its principal place of business in Chicago, Illinois. Hard Eight was not registered with the Commission in any capacity during the Relevant Period.

Trader A has never been registered with the Commission in any capacity.

C. FACTS

During the Relevant Period, Hard Eight, by and through Trader A, placed bids and offers for futures contracts on Globex, the CME’s electronic trading platform, in the E-mini contract with the intent to cancel those orders before execution (“Spoof Orders”). At the time the Spoof Orders were placed and cancelled, they constituted a substantial percentage of the best bid or offer.

Trader A placed Spoof Orders in order to create the false impression of significant buying or selling interest. Trader A used this false impression of buying or selling interest, or the sudden and dramatic removal thereof, to induce other market participants to transact with orders that he wanted to be executed (“Genuine Orders”) at prices or in quantities favorable to Trader A. Trader A engaged in this conduct on more than a thousand occasions during the Relevant Period.

Trader A’s manipulative trading took several forms. At times, Trader A entered Spoof Orders to benefit Genuine Orders resting on the opposite side of the electronic order book. For example, if Trader A wanted to execute a sell-side Genuine Order, he would place relatively

larger Spoof Orders (as measured by total contracts) on the buy side. Trader A did this to create the false impression of increased demand to buy, which would indicate an imminent price increase. Trader A intended for other traders to react by placing aggressive buy orders that crossed the bid-ask spread and executed against his sell-side Genuine Order. Once Trader A started getting fills on his Genuine Orders, Trader A would cancel his Spoof Orders.

At other times, traders would place orders at the same price level as Trader A's existing Spoof Orders. When this occurred, Trader A would at times send an aggressive order to "flip" his bias from buy to sell (or vice versa) and use a wash-blocking functionality to virtually simultaneously cancel his Spoof Orders, thus, for example, replacing his Spoof Order to sell with an aggressive Genuine Order to buy at the same price level. This allowed Trader A to match with the resting orders at that price level before other traders could react to the cancellation of Trader A's Spoof Orders.

Finally, Trader A also canceled his Spoof Orders in a manner designed to create what is sometimes referred to as a "vacuum"—that is, by canceling his Spoof Orders virtually simultaneously to create the false impression of a sudden and significant decline in buying or selling interest, thus indicating an imminent price decrease or increase. Trader A intended for other traders to react to this "vacuum" by placing aggressive orders that crossed the bid-ask spread, to fill Genuine Orders Trader A left resting on the same side of the market as the "vacuum" he had created. This often resulted in Trader A successfully moving the market an entire price level.

Trader A committed these violations within the course and scope of his capacity as a partner of, and trader for, Hard Eight.

III. LEGAL DISCUSSION

A. SPOOFING 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), prohibits any person from engaging 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).

As described above, Hard Eight, by and through the acts of Trader A, entered numerous bids or offers on a registered entity with the intent to cancel those bids or offers before execution. Hard Eight therefore acted in violation of Section 4c(a)(5)(C) of the Act. *See, e.g., United States v. Coscia*, 866 F.3d 782, 795 (7th Cir. 2017) ("[A] conviction for spoofing requires that the prosecution prove beyond a reasonable doubt that Mr. Coscia knowingly entered bids or offers with the present intent to cancel the bid or offer prior to execution."), *reh'g and suggestion for reh'g en banc denied* (Sept. 5, 2017), *cert. denied*, 138 S. Ct. 1989, 201 L. Ed. 2d 249 (2018); *CFTC v. Oystacher*, 203 F. Supp. 3d 934, 942 (N.D. Ill. 2016) (denying motion for judgment on the pleadings for spoofing claim based on "flipping" conduct); *see also In re Mohan*, CFTC No. 19-06, 2019 WL 978808, at *3 (Feb. 25, 2019) (consent order) (finding that entry of orders with intent to cancel to benefit opposite-side resting orders constituted spoofing); *In re Singhal*, CFTC No. 18-11, 2018 WL 1782904, at *1 (Apr. 9, 2018) (consent order) (finding that entry of orders

with intent to cancel to benefit opposite-side aggressive orders, i.e., “flipping,” constituted spoofing).

B. USE OF A MANIPULATIVE OR DECEPTIVE SCHEME IN VIOLATION OF SECTION 6(c)(1) OF THE ACT AND REGULATION 180.1(a)

Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and corresponding Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2018), prohibit any person, directly or indirectly, in connection with any contract for future delivery on or subject to the rules of any registered entity, from intentionally or recklessly using or employing, or attempting to use or employ, any manipulative device, scheme, or artifice to defraud or engage, or attempting 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, Hard Eight, by and through the acts of Trader A, recklessly or intentionally employed a manipulative or deceptive scheme which created the false appearance of buying or selling interest in the E-mini in order to induce other market participants to trade at prices, or in quantities, favorable to Hard Eight. Hard Eight implemented this scheme through the use of Spoof Orders, as described above, which were entered and cancelled in order to benefit orders that Hard Eight, by and through the acts of Trader A, entered with intent to trade, i.e., Genuine Orders. Accordingly, Hard Eight violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3). *See CFTC v. Oystacher*, No. 15-CV-09196, 2016 WL 8256391, at *6 (N.D. Ill. Dec. 20, 2016) (consent order; finding spoofing conduct manipulative and deceptive within the meaning of 180.1); *see also Mohan*, 2019 WL 978808, at *3 (“Mohan, along with others, employed a manipulative and deceptive scheme at Firm A wherein he entered Spoof Orders to intentionally send false signals to the market that he actually wanted to buy or sell the number of contracts specified in the Spoof Orders.”); *In re Victory Asset, Inc.*, CFTC No. 18-36, 2018 WL 4563040, at *3 (Sept. 19, 2018) (consent order) (“Victory, by and through the acts of Franko, employed a manipulative scheme wherein it created or exacerbated the appearance of an order book imbalance in a manner that could and did affect market activity on the domestic exchanges. Franko employed his scheme through Spoof Orders combined with Genuine Orders.”).²

C. HARD EIGHT IS LIABLE FOR THE ACTS OF TRADER A

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2018), provide that the “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, as well as of such official, agent, or other person.”

² *Cf. Coscia*, 866 F.3d at 797 (affirming conviction for commodities fraud based on spoofing; “[Coscia’s] scheme was deceitful because, at the time he placed the large orders, he intended to cancel the orders.”); *CFTC v. Kraft Foods Grp., Inc.*, 153 F. Supp. 3d 996, 1010 (N.D. Ill. 2015) (denying motion to dismiss Regulation 180.1 claim, noting that “claims of manipulation must involve ‘conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities’” (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 199 (1976))); *SEC v. Lek Sec. Corp.*, 276 F. Supp. 3d 49, 60 (S.D.N.Y. 2017) (denying motion to dismiss; “The SEC has consistently found layering and spoofing activity to violate § 10(b) and Rule 10b–5.”).

Section 2(a)(1)(B) of the Act and Regulation 1.2 impose strict liability upon principals for the actions of their agents acting within the scope of their employment.

Trader A’s spoofing and manipulative or deceptive conduct occurred within the course and scope of his employment, office, or agency as a partner and trader at Hard Eight. Therefore, pursuant to Section 2(a)(1)(B) of the Act, and Regulation 1.2, Hard Eight is liable for Trader A’s acts, omissions, and failures in violation of the provisions of the Act and Regulations cited above. See *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986) (“[W]e have no doubt that section 2(a)(1) imposes strict liability on the principal . . . , provided, of course, as the statute also states expressly, that the agent’s misconduct was within the scope or (equivalently but more precisely) in furtherance of the agent.”).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent Hard Eight Futures, LLC violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012), Section 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. § 180.1(a)(1), (3) (2018).

V. OFFER OF SETTLEMENT

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

- A. Acknowledges service of the Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in the Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of the 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 this 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, 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 the Order;
- D. Stipulates that the record basis on which the Order is entered shall consist solely of the findings contained in the Order to which Respondent consented in this Offer;
- E. Consents, solely on the basis of this Offer, to the Commission’s entry of the Order in the form attached hereto that:
1. Makes findings by the Commission that Respondent violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012), Section 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. § 180.1(a)(1), (3) (2018);
 2. Orders Respondent to cease and desist from violating Sections 4c(a)(5)(C) and Section 6(c)(1) of the Act, and Regulation 180.1(a)(1) and (3);
 3. Orders Respondent to pay a civil monetary penalty in the amount of one million seven hundred fifty thousand dollars (\$1,750,000);
 4. Orders Respondent and its successors and assigns to comply with its undertakings as set forth below in Part VI of the Order.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012), Section 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. § 180.1(a)(1), (3) (2018);
- B. Respondent shall pay a civil monetary penalty in the amount of one million seven hundred fifty thousand dollars (\$1,750,000) (“CMP Obligation”) within ten (10) days of the date of the entry of this Order. If the CMP Obligation is not paid within ten (10) days of the date of the entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent 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, 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;

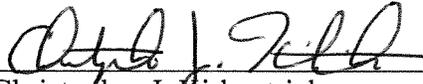
- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order or creating, or tending to create, the impression that the 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 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.
- D. Respondent 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. Respondent shall also cooperate with the Commission in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.
- E. 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 the Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

- F. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in the Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing addresses 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: September 30, 2019