

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

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In the Matter of: )  
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Aron Seidenfeld, )  
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Respondent. )  
)  
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\_\_\_\_\_ )

CFTC Docket No. 19-51

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Proceedings Clerk

8:32 pm, Sep 30, 2019

**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 July 2014 to at least October 2018 (“Relevant Period”), Aron Seidenfeld (“Respondent”) violated Section 6(c)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 9(1) (2012), and Commission Regulation (“Regulation”) 180.1(a)(2) and (3), 17 C.F.R. § 180.1(a)(2), (3) (2019), promulgated under the Commodity Exchange Act (“Act”). 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 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, Respondent caused a series of material misrepresentations to be made to futures commission merchants (“FCMs”) concealing the association of Respondent’s family trust with futures accounts maintained by H.A.L. NY Holdings, LLC (“HAL”) and BSD Assets, LLC (“BSD”). These misrepresentations were part of a deceptive course of business intended to induce the FCMs to open trading accounts, even though unsecured debits were outstanding in preexisting FCM trading accounts controlled by the trust. As a result, HAL and BSD were able to open accounts with five separate FCMs, leaving two of them with unsecured debits totaling in excess of \$500,000. Respondent’s misrepresentations and deceptive course of business violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(2) and (3), 17 C.F.R. § 180.1(a)(2), (3) (2019).

### B. RESPONDENT

**Aron Seidenfeld** is an individual based in Brooklyn, New York, who during the Relevant Period traded options and futures for accounts held in the names of entities under his control. He was listed as the principal of a commodity trading advisor from 2004 through 2007, but has never been registered with the Commission in any capacity.

### C. FACTS

Respondent’s children’s assets are held through the Seidenfeld Irrevocable Trust (the “Trust”), which designates Respondent and another individual as the Trustees and their children as the Trust’s beneficiaries. The Trust in turn owns various entities—including (1) a wholly-owned limited liability company (the “LLC”); (2) HAL; and (3) BSD.<sup>2</sup> Starting in 2009, Respondent traded options and futures in an account held in the name of the LLC at FCM #1. In June 2014, the LLC account sustained losses resulting in an unsecured debit of approximately \$2.1 million. The LLC did not satisfy that debit; thereafter Respondent ceased trading in the LLC account.

Following the losses sustained in the LLC account, HAL opened a series of accounts:

- In July 2014, HAL opened an account with FCM #2;
- In November 2014, HAL moved its trading account to FCM #1;
- In July 2015, HAL moved its trading account to FCM #3; and
- In September 2015, HAL moved its trading account back to FCM #1.

In order to open these trading accounts, HAL was required to submit account applications to each FCM. On each account application, Respondent concealed the identity of the Trust and

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<sup>2</sup> The Trust, of which Respondent is a trustee, holds a 100% stake in the LLC, a 99% stake in HAL (with the remaining 1% owned by a personal friend of Respondent), and a 98.75% stake in BSD (with the remaining 1% owned by the same personal friend and 0.25% owned by Respondent’s son).

directed that the application reflect his son-in-law (“Son-in-Law”) as HAL’s President and as the authorized trader and sole owner and guarantor on the account. Each application attached documentation reflecting the Son-in-Law as HAL’s sole owner. However, the Son-in-Law was not HAL’s President or sole owner, had no involvement with running or managing the entity, and had no trading experience. In addition, the documentation submitted to support the FCM applications was inconsistent with other existing versions of HAL’s corporate documentation, and was apparently generated solely to support the FCM applications. Respondent listed the Son-in-Law on HAL’s account applications for the express purpose of keeping the Seidenfeld name off of the FCM paperwork while the LLC \$2.1 million debit remained outstanding with FCM #1. In July 2017, the HAL account sustained trading losses at FCM #1, leaving an unsecured debit of nearly \$80,000. HAL did not repay that debit; thereafter the HAL account ceased trading.

Following the cessation of trading of accounts under the name of HAL, Respondent began trading in accounts opened in the name of BSD:

- In October 2017, a trading account was opened for BSD with FCM #4; and
- In April 2018, the BSD account was moved to FCM #5.

Once again, in order to open these trading accounts, BSD was required to submit account applications to each FCM. In each application, Respondent concealed the identity of the Trust as the effective owner of BSD. Respondent directed that the application identify his son (“Son”) as the sole owner of BSD and as the guarantor on the account. Each application attached documentation reflecting the Son as BSD’s sole owner and operator. However, the Son was not BSD’s sole owner or operator. The documentation submitted to support the FCM applications was inconsistent with other existing versions of BSD’s corporate documentation, and was apparently generated solely to support the FCM applications. In October 2018, the BSD account sustained trading losses at FCM #5, leaving an unsecured debit of approximately \$460,000.

### III. LEGAL DISCUSSION

Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), provides in relevant part that “[i]t shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap . . . or contract for future delivery on or subject to the rules of any registered entity, any . . . deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate.” Regulation 180.1(a)(2) and (3), 17 C.F.R. § 180.1(a)(2), (3) (2019), in turn, provides that “[i]t shall be unlawful for any person, directly or indirectly, in connection with any swap . . . or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly: . . . (2) Make, or attempt to make, any untrue or misleading statement of material fact or to omit to state a material fact necessary in order to make the statements made not untrue or misleading; [or] (3) Engage, 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.”

Respondent caused to be made numerous material misrepresentations on account applications to at least five separate FCMs as part of a deceptive course of business in connection with his options and futures trading, in violation of Section 6(c)(1) of the Act and Regulation

180.1(a)(2) and (3). These material misrepresentations and omissions include, at a minimum, Respondent concealing that the Trust was the true owner of HAL and BSD; affirmatively misrepresenting that other individuals were the sole owners, members, and/or officers of the LLC; and attaching false documentation in support of those misrepresentations.

An FCM account application allows a trader to access the options and futures markets, and is inherently interconnected with and a prerequisite for options and futures trading. Thus, misstatements made on an account application are, by definition, made in connection with the trading that subsequently occurs in that account. *See, e.g., R&W Tech. Servs. Ltd. v. CFTC*, 205 F.3d 165, 172 (5th Cir. 2000) (holding that misrepresentations are “in connection with” a commodities transaction when made to sell a trading software because “[t]his expensive software had no purpose except as a device for choosing which trades to make”); *see also SEC v. Pirate Investor LLC*, 580 F.3d 233, 244-45 (4th Cir. 2009) (holding that misstatements are “in connection with” securities transactions where, among other things, the parties’ relationship was such that it would necessarily involve trading in securities or the defendant intended to induce a securities transaction).

An FCM relies on the information provided in account applications as part of the basis for approving trading accounts and allowing traders access to the commodities and derivatives markets through the FCM. This is necessary for an FCM to be able to manage risk in its business and fulfill its regulatory obligations including, among other things, establishing risk-based limits in customer accounts based on the particulars of each customer. *See, e.g.,* Regulation 1.73(a), 17 C.F.R. § 1.73(a) (2018). FCMs who clear on behalf of customers are financially at risk for those customers’ trades; accordingly, an FCM that is prevented from managing the risk associated with a particular customer because that customer has made misrepresentations as to its financial resources or other risks associated with that customer (e.g., by concealing risk factors) is at increased risk of insolvency and default itself. *See, e.g.,* Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 Fed. Reg. 21,278, 21,287 (Apr. 9, 2012). Insolvency and default of FCMs can disrupt the markets and the clearing system and harm customers, and goes to the heart of the concerns the Act and Regulations are meant to address. *Id.* By causing false information to be submitted to each of the FCMs, Respondent interfered with each FCM’s ability to conduct its business with complete and sufficient information and fulfil its regulatory obligations. Such misrepresentations are undoubtedly material under the law. *See CFTC v. Heffernan*, No. 4:04-23302-TLW-TER, 2006 WL 2434015, at \*5 n. 39, \*7 (D.S.C. Aug. 21, 2006) (failing to disclose prior CFTC fraud adjudications, while operating a new business under a fictitious name, was materially misleading in violation of Section 4o(1) of the Act); *CFTC v. Gibraltar Monetary Corp.*, No. 04-80132-CIV, 2006 WL 1789018, at \*17 (S.D. Fla. May 30, 2006) (“[A] reasonable investor would most certainly have considered the previous regulatory violations . . . especially the CFTC cease and desist order . . . an important factor in deciding whether to use Gibraltar’s services.”).

#### IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Aron Seidenfeld violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(2) and (3), 17 C.F.R. § 180.1(a)(2), (3) (2019).

#### V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which he, 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 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 (2019), relating to, or arising from, this proceeding;
  7. 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
  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; 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 Respondent violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(2) and (3), 17 C.F.R. § 180.1(a)(2), (3) (2019);
  2. Orders Respondent to cease and desist from violating Section 6(c)(1) of the Act and Regulation 180.1(a)(2) and (3);
  3. Orders Respondent to pay a civil monetary penalty in the amount of one hundred sixty thousand dollars (\$160,000), plus post-judgment interest;
  4. Orders that Respondent be prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), for a period of ninety (90) days after the date of entry of this Order, and all registered entities shall refuse him trading privileges; and
  5. Orders Respondent 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. Respondent shall cease and desist from violating Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(2) and (3), 17 C.F.R. § 180.1(a)(2), (3) (2019);
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred sixty thousand dollars (\$160,000) ("CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) 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 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

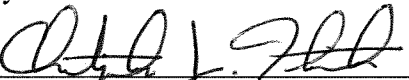
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondent and the name and docket number of this proceeding. The 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 is prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), for a period of ninety (90) days after the date of entry of this Order, and all registered entities shall refuse him trading privileges during that period; and
- D. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent 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 Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent shall comply with this agreement, 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 agreement.
  2. Respondent agrees that he shall not, for a period of ninety (90) days, directly or indirectly:
    - a. enter into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018), for Respondent's own personal account(s) or for any account(s) in which Respondent has a direct or indirect interest;
    - b. have any commodity interests traded on Respondent's behalf;
    - c. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;

- d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
  - e. apply for registration or claim exemption from registration with the Commission in any capacity, and engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2018); and/or
  - f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2018)), agent, or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)), registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9).
3. 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 his 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 Respondent satisfies in full his CMP Obligation as set forth in this Order, Respondent 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.

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

Dated: September 30, 2019