

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

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2:04 pm, Sep 28, 2020

In the Matter of:

FNY Partners Fund LP,

Respondent.

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CFTC Docket No. 20-67

**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 January 2013 through January 2016 (“Relevant Period”), FNY Partners Fund LP (“Respondent” or “FNY Fund”) violated Section 4c(a)(5)(C) of the Commodity Exchange Act (“Act”), 7 U.S.C. §6c(a)(5)(C) (2018). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether FNY Fund 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

During the Relevant Period, Respondent, by and through one of its former traders, Trader A, engaged in multiple 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 futures contracts including, among other contracts, soybean futures contracts, gold futures contracts, and crude oil futures contracts, traded on Chicago Board of Trade (“CBOT”), Commodity Exchange (“COMEX”), and New York Mercantile Exchange (“NYMEX”), respectively, designated contract markets that are owned and operated by CME Group Inc. This conduct violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018).

In accepting Respondent’s Offer, the Commission recognizes Respondent’s cooperation with the Division of Enforcement’s investigation of this matter and Respondent’s remediation.

B. RESPONDENT

FNYPartnersFund LP is a limited partnership organized in Delaware and headquartered in New York City. It is not registered in any capacity with the Commission.

C. FACTS

1. **Spoofing**

During the Relevant Period, Respondent employed Trader A. Trader A’s responsibilities during the Relevant Period included trading futures contracts, such as soybean futures contracts, gold futures contracts, and crude oil futures, among other futures contracts.

During the Relevant Period, Trader A began placing bids and offers in Respondent’s trading account for, among other things, CBOT soybean, COMEX gold, and NYMEX crude oil futures contracts with the intent to cancel those bids and offers before their execution. Trader A’s trading pattern generally involved the placement of an order that he wanted to get filled (“Genuine Order”), on one side of the market, typically consisting of a passive order for ten or fewer contracts; and on the opposite side of the market, placement of one or more orders that he intended to cancel before execution (“Spoof Order”), typically consisting of one or more passive orders for, collectively, five times as many contracts as the Genuine Order. Generally, Trader A quickly canceled the Spoof Order after placing it, and often after his Genuine Order was filled.

During the Relevant Period, Trader A placed multiple Spoof Orders for, among other contracts, CBOT soybean, COMEX gold, and NYMEX crude oil futures contracts.

2. **Remediation**

Respondent represents that upon notification by the Division of Enforcement of this investigation, it promptly undertook proactive remedial measures and other steps to improve its compliance processes. Among other things, Respondent represents that it has improved its trader training program to include greater focus on spoofing and is implementing an automated

trade surveillance system for Respondent's futures trading, which includes surveillance for spoofing.

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) (2018), 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, Respondent, by and through the acts of Trader A, placed bids and offers for futures contracts listed on CBOT, COMEX, and NYMEX, all registered entities, with the intent to cancel those bids and offers before they were executed. By engaging in this conduct, Trader A 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. **Respondent is Liable for the Acts of its Agents**

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), 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 Trader A engaged in the spoofing conduct described above within the scope of his employment with Respondent, Respondent is liable for Trader A’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, Respondent violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (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 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 (2018), and 28 U.S.C. § 2412 (2018), 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 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, by and through the acts of Trader A, violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018);
 - 2. Orders Respondent to cease and desist from violating Section 4c(a)(5)(C) of the Act;
 - 3. Orders Respondent to pay a civil monetary penalty in the amount of four hundred fifty thousand dollars (\$450,000), within ten days of the date of entry of this Order, plus post-judgement interest if not paid in full within ten days of the date

of entry of this Order; and

4. Orders Respondent to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.
- F. Represents that since learning of the misconduct at issue, Respondent has proactively engaged in remedial measures relating to its futures trading. Among other things, Respondent represents that it has improved its trader training program to include greater focus on spoofing and is implementing an automated trade surveillance system for futures trading, which includes surveillance for spoofing.

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 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018).
- B. Respondent shall pay a civil monetary penalty in the amount of four hundred fifty thousand dollars (\$450,000) (“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 unpaid portion of 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 (2018).

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

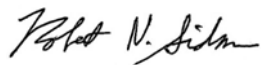
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondent and the name and docket number of this proceeding. 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 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 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 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. **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 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.



Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 28, 2020