

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Thomas Donino,

Respondent.

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) **CFTC Docket No. 20-68**
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2:07 pm, Sep 28, 2020

**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”), Thomas Donino (“Respondent” or “Donino”) 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 Donino 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, Donino 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, Donino 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, Donino engaged in multiple instances of the disruptive trading practice known as “spoofing” (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 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).

B. RESPONDENT

Thomas Donino is a resident of Jupiter, Florida. Donino traded on behalf of a proprietary trading firm during the Relevant Period. Donino has never been registered with the Commission.

C. FACTS

During the Relevant Period, Donino engaged in trading in commodity futures accounts on behalf of his employer. During the Relevant Period, Donino placed bids and offers for, among other things, CBOT soybean futures contracts, COMEX gold futures contracts, and NYMEX crude oil futures contracts with the intent to cancel the bids and offers before execution. Donino’s spoofing activity 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, Donino quickly canceled the Spoof Order after placing it, and often after his Genuine Order was filled.

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

III. LEGAL DISCUSSION

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, Donino 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, Donino 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”).

IV. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Donino violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018).

V. OFFER OF SETTLEMENT

Donino 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 (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 he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–53, 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 Donino 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 Donino violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018);
 2. Orders Donino to cease and desist from violating Section 4c(a)(5)(C) of the Act;
 3. Orders Donino to pay a civil monetary penalty in the amount of one hundred thirty-five thousand dollars (\$135,000), within ten days of the date of entry of this Order, plus post-judgment interest if not paid in full within ten days of the date of entry of this Order;
 4. Orders that Donino 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) (2018)), for a period of three months after the date of entry of this Order, and all registered entities shall refuse him trading privileges during that period; and
 5. Orders Donino 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. Donino shall cease and desist from violating Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2018).
- B. Donino shall pay a civil monetary penalty in the amount of one hundred thirty-five thousand dollars (\$135,000) ("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).

Donino 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, Donino shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Donino shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondent and the name and docket number of this proceeding. Donino 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. Donino 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) (2018)), for a period of three months after the date of entry of this Order, and all registered entities shall refuse him trading privileges during that period; and
- D. Donino shall comply with the following conditions and undertakings set forth in the Offer:
 - 1. Public Statements: Donino 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 Donino's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Donino 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. Donino agrees that he shall not, directly or indirectly, for a period of three months starting from the date of entry of this Order:
 - a. enter into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. §1.3 (2019)), for Donino's own

personal account or for any account in which Donino has a direct or indirect interest;

- b. have any commodity interests traded on his 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; and
 - d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests.
3. Partial Satisfaction: Donino understands and agrees that any acceptance by the Commission of any partial payment of Donino'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 Donino satisfies in full his CMP Obligation as set forth in this Order, Donino 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.



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

Dated: September 28, 2020