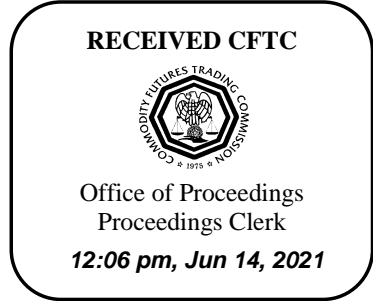


**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**



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 )  
**In the Matter of:** )  
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**Mathew D. Webb and Classic Energy,** ) **CFTC Docket No: 21-09**  
**LLC** )  
 )  
 )  
**Respondents.** )  
\_\_\_\_\_ )

**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 at least September 4, 2015 through November 7, 2019, Mathew D. Webb (“Webb”) and Classic Energy, LLC (“Classic”) (collectively, “Respondents”) violated Sections 4b(a)(1)(A), (C); 4c(a)(1)-(2); 6(c)(1); and 9(a)(4) of the Commodity Exchange Act (“Act” or “CEA”), 7 U.S.C. §§ 6b(a)(1)(A), (C); 6c(a)(1)-(2); 9(1); 13(a)(4) (2018), and Commission Regulations (“Regulations”) 166.3 and 180.1(a)(1) and (3), 17 C.F.R. §§ 166.3; 180.1(a)(1), (3) (2020). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents 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, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Webb and Classic admit the findings and conclusions herein and consent 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> Respondents consent 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 agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondents do 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. Respondents

## II. FINDINGS

The Commission finds the following:

### A. SUMMARY

Webb was the founder and president of Classic, a voice broker that facilitated block trades between its customers in natural gas and other energy futures contracts. Webb brokered block trades for Classic's customers on ICE Futures, U.S. ("ICE") and New York Mercantile Exchange ("NYMEX"), a division of CME Group, Inc. ("CME").

In *In re Classic Energy LLC*, CFTC No. 19-50, 2019 WL 4915492, at \*3 (Sept. 30, 2019) (consent order) ("*Classic I*"), the Commission found that Webb and Classic violated the Act and Regulations by, among other things, taking the other side of block trades in natural gas futures listed on ICE, thereby misappropriating the nonpublic block trade order information of Classic's brokerage customers.<sup>2</sup> *Classic I* addressed Webb's and Classic's conduct between April 30, 2014 and September 3, 2015. *Id.* at \*1.

Webb's and Classic's violations of the Act and Regulations, however, extended beyond this time period. From at least September 4, 2015 through January 22, 2019, Webb engaged in a scheme to misappropriate material, nonpublic block trade order information of Classic's institutional energy company customers (the "Energy Companies"), including information about the price and quantity at which the Energy Companies sought to execute block trades in certain natural gas futures contracts on both ICE and NYMEX ("Inside Information"). As part of the scheme, certain energy traders for the Energy Companies (collectively, the "Company Traders") provided Webb with this information, which Webb then disclosed to a certain individual who traded his own proprietary trading account ("Individual Trader 1") knowing that Individual Trader 1 would trade on this Inside Information. Webb benefited from this disclosure by receiving (along with the Company Traders) a share of the profits Individual Trader 1 realized from offsetting trades with other market participants. Webb further defrauded the Energy Companies by creating the false impression that he was brokering block trades for the Energy Companies in the ordinary course of business, when in fact he was facilitating and executing fictitious, non-arm's length block trades at non-bona fide prices designed to enable Individual Trader 1 to make a profit on offsetting trades.

From at least September 4, 2015 through at least August 2019, Webb also participated in a fraudulent scheme in which he and other brokers at Classic paid a portion of the commissions Classic received from one of the Energy Companies ("Energy Company A") as a kickback to

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do 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.

<sup>2</sup> *Classic I* also found that Classic and Webb violated certain recordkeeping and supervision provisions of the Act and Regulations. Classic and Webb paid, jointly and severally, a civil monetary penalty of \$1,500,000 and disgorgement of \$413,065, per *Classic I*, which also imposed on Webb a registration and trading ban effective until January 3, 2022. *Classic Energy, LLC*, 2019 WL 4915492, at \*11-13.

certain Company Traders who traded on behalf of Energy Company A. In return, these Company Traders increased their brokerage business with Classic, which in turn increased Webb's income. Webb never disclosed these kickback payments to Energy Company A.

In addition, from at least September 4, 2015 through November 7, 2019, Classic and Webb, as president and a supervisory associated person ("AP") of Classic, did not diligently supervise Webb and other Classic brokers in two respects. First, Webb and Classic allowed certain other brokers at Classic to misappropriate Inside Information in the same manner as Webb did. Second, Webb and Classic allowed certain other brokers to participate in the scheme to pay kickbacks to certain Company Traders out of the brokerage commissions that Classic charged to Energy Company A.

Finally, on September 15, 2016, Webb made false statements to ICE in connection with ICE's investigation of certain block trades brokered by Classic in which Webb took the other side in his proprietary account in the name of MDW Capital, LLC ("MDW"), trades which were the subject of *Classic I*. Specifically, Webb lied to ICE about his relationship with certain Company Traders and his motivations for taking the other side of the block trades under investigation.

Classic is vicariously liable for both Webb's misappropriation of Inside Information, Webb's participation in the commission kickback scheme, Webb's failure to diligently supervise, and Webb's false statements to ICE.

## **B. RESPONDENTS**

**Mathew D. Webb** is the founder, president, sole member, and former registered associated person of Classic Energy LLC. Webb brokered block trades for Classic's customers in futures listed on ICE and NYMEX. On June 3, 2019, Webb withdrew his registration as an associated person of Classic. On November 7, 2019, Webb withdrew his listing as a principal of Classic with the National Futures Association.

**Classic Energy LLC** was a registered introducing broker headquartered in Houston, Texas that, among other services, brokered block trades for customers in energy futures and other products listed on ICE and NYMEX. Around the time the Commission issued *Classic I*, Classic ceased all business operations and, on November 7, 2019, withdrew its registration with the Commission as an introducing broker. Since then, Classic has not conducted any business.

## **C. FACTS**

### **1. Webb Engaged in a Fraudulent Scheme To Misappropriate Inside Information of His Customers and Facilitate Fictitious, Non-Arm's Length Block Trades Between the Company Traders and Individual Trader 1.**

Under the Regulations governing the conduct of introducing brokers and their affiliated persons, under the brokerage agreements between Classic and the Energy Companies, and as an agent of these Energy Companies for the purpose of facilitating block trades, Webb and Classic

owed the Energy Companies a duty to keep confidential their nonpublic information, including the Inside Information provided to Webb and Classic regarding the Energy Companies' block trade orders.

The Company Traders were each responsible for executing natural gas block trades for the Energy Companies and regularly communicated with Webb and other Classic brokers regarding the price and quantity at which the Energy Companies would execute block trades. As employees of the Energy Companies, and under the respective employment agreements, policies, and procedures of each Energy Company that governed their employment, the Company Traders had a duty to keep Inside Information confidential and not disclose it to unauthorized persons or use it for their own benefit.

From at least September 4, 2015 through January 27, 2019, Webb breached his duty to the Energy Companies by disclosing Inside Information provided by the Company Traders. The Company Traders provided this Inside Information to Webb in violation of their own duties to the Energy Companies, and Webb in turn further disclosed this Inside Information to Individual Trader 1, so that Individual Trader 1 could execute a fictitious, non-arm's length block trade with one of the Energy Companies at a price that allowed Individual Trader 1 to make an immediate profit through an offsetting trade with another market participant. For example, Company Trader A would contact Webb, often through a personal communication device, and provide Webb with Inside Information regarding the natural gas futures contract Energy Company A would be willing to trade and the price range it would accept. Rather than seek a bid or offer from among Classic's other brokerage customers, as was Classic's typical practice, Webb would contact Individual Trader 1 and provide Individual Trader 1 with the information disclosed by Company Trader A. Individual Trader 1 would then select a non-bona fide price for the block trade that would allow Individual Trader 1 to offset the block trade for an immediate profit. Webb would send a confirmation to Energy Company A that the block trade was executed and would submit the block trade to the relevant exchange for execution and clearing. Individual Trader 1 would later share the profits from the offsetting trades with Webb, as well as with the Company Trader involved in that particular trade.

As part of this scheme, Webb worked with the Company Traders to conceal the scheme from the Energy Companies. The Company Traders and Webb communicated about the trades through personal communications devices while also creating an audit trail for the trades that made them appear to be arm's length trades executed in the normal course of business. Webb also charged the Energy Companies a commission, which further created the appearance that he was brokering trades with arm's length counterparties in the ordinary course of Classic's brokerage business. In order to conceal the scheme further, Webb typically received his share of the profits generated by Individual Trader 1 in cash.

In addition to Webb, at least two other brokers at Classic (Broker 1 and Broker 2) also misappropriated Inside Information from certain Energy Companies in a similar manner. Between at least September 4, 2015 and November 7, 2019, Broker 1 disclosed the Inside Information of Energy Company A and Broker 2 disclosed the Inside Information of Energy Company B regarding each company's block trade orders to Individual Trader 1 so that

Individual Trader 1 could take the other side of these block trades at advantageous prices. Individual Trader 1 split his profits from this trading three ways with each broker and Company Trader involved in the particular trade.

## **2. Webb and Classic Engaged in a Fraudulent Scheme To Pay Brokerage Kickbacks to Company Traders.**

From at least September 4, 2015 through August 2019, Webb and Classic, through Webb and other brokers, also engaged in a scheme to defraud Energy Company A by paying kickbacks to certain Company Traders trading for Energy Company A. As part of this scheme, Webb and Company Trader A agreed that Webb, and later Broker 1, would pay a portion of the commissions Classic received for block trades brokered for Energy Company A to Company Trader A and later Company Trader B. In exchange, these Company Traders directed additional brokerage business to Classic and Webb, resulting in increased commission revenue for Classic and increased compensation for Webb. At some point after Webb and Broker 1 began making these kickback payments, Company Trader A and Company Trader B increased Classic's commission rate for Energy Company A, which both increased Energy Company A's cost to trade through Classic and further increased Classic's revenue, Webb's compensation, and the share of commissions Webb paid to the Company Traders involved in the scheme.

Webb and Broker 1 made these payments to the Company Traders in multiple ways, all designed to conceal these payments from Energy Company A. For example, Webb and Broker 1 made some payments to bank accounts in the name of a d/b/a entity or shell companies set up by relatives of Company Trader A, and these funds were ultimately transferred to or used by Company Trader A or other members of his family. In other instances, Webb and Broker 1 made payments to Company Trader A and Company Trader B in cash. Neither Webb, Classic, Broker 1, nor the Company Traders involved in this scheme ever disclosed these payments to Energy Company A.

## **3. Webb and Classic Failed To Diligently Supervise.**

As a registered introducing broker, Classic—and Webb as a supervisory AP—were obligated under Regulation 166.3, 17 C.F.R. § 166.3 (2020), to diligently supervise the handling of all commodity interest accounts introduced by Classic and all other activities of its partners, officers, employees, and agents. From at least September 4, 2015 through November 7, 2019, Webb and Classic failed to ensure that Classic had an adequate system of oversight in place to detect or prevent its brokers or other affiliated persons from misappropriating material, nonpublic information from Classic's customers, or to deter or prevent its brokers or other affiliated persons from participating in the scheme to pay brokerage kickbacks to Company Trader A and Company Trader B. Nor did Webb and Classic monitor or review the activities of Classic's brokers.

During this time period, Webb was aware that brokers within Classic (including himself) were misappropriating Inside Information from Classic's brokerage customers and paying brokerage kickbacks to certain Company Traders in exchange for more brokerage business.

Webb took no steps to prevent these brokers from breaching their duties to Classic's customers and violating the Act and Regulations and contributed, through his own participation in the schemes, to an environment where illegal conduct was tolerated.

#### **4. Webb Lied to ICE About the Fraudulent Scheme.**

In the course of an investigation of Webb and Classic, ICE's Market Regulation Department interviewed Webb on September 15, 2016 regarding the trading at issue in *Classic I*. In this interview, Webb made material, false statements and omissions about his motivations for taking the opposite side of a Classic customer's block trade in his proprietary trading account and the circumstances under which he would do so. Specifically, when asked by ICE Market Regulation Department staff under what circumstances he would take the other side of a block trade customer order in his MDW account, Webb stated that he would not take the other side unless he was "bettering the existing market." When asked whether he had ever taken the other side of a customer block trade order in his MDW account before he "shopped" it to other market makers, Webb stated that to his knowledge, he never had. Webb's statements to ICE in the September 15, 2016 interview were false.

### **III. LEGAL DISCUSSION**

#### **A. Webb's Fraudulent Scheme and Misappropriation of Material, Nonpublic Information Violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3).**

Under Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2018), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2020), it is unlawful for any person, directly or indirectly, to intentionally or recklessly: (1) use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; . . . 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.

Trading on material, nonpublic information in breach of a pre-existing duty may violate Section 6(c)(1) and Regulation 180.1. As the Commission has expressly stated, "[d]epending on the facts and circumstances, a person who engages in deceptive or manipulative conduct in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, for example by trading on the basis of material nonpublic information in breach of a pre-existing duty (established by another law or rule or agreement, understanding, or some other source), or by trading on the basis of material nonpublic information that was obtained through fraud or deception, may be in violation of final Rule 180.1." Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 Fed. Reg. 41,398, at 41,403 (emphasis added); *CFTC v. EOX Holdings, L.L.C.*, 405 F. Supp. 3d 697, 709-11 (S.D. Tex. 2019) (holding that the misappropriation theory developed under Section 10b of the Securities Exchange Act and SEC Rule 10b-5 also applies to claims under Section 6(c) of the Act and Regulation 180.1); see *In re Schultz*, CFTC No. 20-76, 2020 WL 5876731, at \*4-6 (Sept. 30, 2020) (consent order) (finding that energy trader violated Section 6(c)(1) and 180.1 by misappropriating his employer's confidential, nonpublic

information and disclosing it to other individuals with the intent to personally benefit from the disclosure); *see also United States v. O'Hagan*, 521 U.S. 642, 652 (1997) (holding that person violates SEC Rule 10b-5 by misappropriating confidential information for securities trading purposes in breach of a duty owed to the source of the information).

As a broker at Classic, Webb regularly received Inside Information belonging to the Energy Companies from the Company Traders that he knew was both material and nonpublic. Webb owed duties to the Energy Companies to keep this Inside Information confidential under his brokerage agreements, as an agent of the Energy Companies for the purposes of facilitating block trades, and as a registered introducing broker under Commission Regulation 155.4, 17 C.F.R. § 155.4 (2020). Webb engaged in a scheme to defraud the Energy Companies by intentionally misappropriating the Energy Companies' Inside Information. Webb did so by disclosing the Energy Companies' block trade order information to Individual Trader 1, knowing that Individual Trader 1 would, on the basis of this information, engage in non-arm's length block trades with the Company Traders at non-bona fide prices that would allow Individual Trader 1 to profit on offsetting trades. Webb personally benefitted from these disclosures by sharing in the profits that Individual Trader 1 generated trading on the basis of this Inside Information.

Webb also engaged in a scheme to defraud the Energy Companies by concealing from the Energy Companies his role in facilitating fictitious block trades between the Company Traders and Individual Trader 1 that he knew were not negotiated at arm's length, were not executed at bona fide prices, and were intended to benefit Webb, the Company Traders, and Individual Trader 1—not the Energy Companies—and creating the false impression that Webb was brokering trades for the Energy Companies in the ordinary course of Classic's business.

Through all this conduct, Webb violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3).

**B. Webb's Fictitious Sales Violated Section 4c(a) of the Act.**

Section 4c(a)(1) and (2) of the Act, 7 U.S.C. § 6c(a)(1)-(2) (2018), in part, makes it "unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction" that is a fictitious sale or is "used to cause any price to be reported, registered, or recorded that is not a true and bona fide price." Fictitious sales include both the unlawful practices specifically enumerated in Section 4c(a) as well as trading techniques that give the appearance of submitting trades to the open market while negating the risk or price competition incident to such a market. *See In re Fisher*, CFTC No. 93-2, 2004 WL 584216, at \*3 n.11 (Mar. 24, 2004).

Webb violated 4c(a)(1) and (2) of the Act by confirming the execution of trades between the Company Traders and Individual Trader 1 that he knew were not negotiated on an arm's-length basis but instead were executed at non-bona fide prices that allowed Individual Trader 1 to profit on offsetting trades. By executing trades in this manner, Individual Trader 1 was able to negate market risk and ensure that he could profit on the block trades executed with the Company Traders, effectively allowing Individual Trader 1 to select the price he needed in order

to make the offsetting trades profitable. Webb facilitated these fictitious trades by purporting to act as a broker for the trades, sending confirmations of their execution to the Energy Companies, and submitting the trades to the relevant exchange for clearing, thereby allowing Individual Trader 1 to profit.

C. **Webb and Classic’s Participation in the Brokerage Kickback Scheme Violated Sections 4b(a)(1) and 6(c)(1) of the Act and Regulation 180.1(a)(1) and (3).**

Section 4b(a)(1)(A) of the Act, 7 U.S.C. § 6b(a)(1)(A) (2018), provides that it shall be unlawful, in or in connection with a futures contract made on or subject to the rules of a designated contract market, for or on behalf of any other person, to cheat or defraud, or attempt to cheat or defraud, such other person. Section 4b(a)(1)(C) of the Act, 7 U.S.C. § 6b(a)(1)(C) (2018), provides that it shall be unlawful, in or in connection with an order or futures contract made on or subject to the rules of a designated contract market, for or on behalf of any other person, willfully to deceive or attempt to deceive, such other person in regard to any act of agency with respect to such order or contract. Liability attaches under Section 4b(a) with “(1) the making of a misrepresentation, misleading statement, or a deceptive omission; (2) scienter; and (3) materiality.” *CFTC v. JBW Capital*, 812 F.3d 98, 106 (1st Cir. 2016).

An omission of a material fact qualifies as a misleading misrepresentation if the circumstances mandated disclosure to ensure that the representations were not misleading. *In re Sogemin Metals Inc.*, CFTC No. 00-44, 2000 WL 136059, at \*4 (Feb. 7, 2000) (consent order) (citing *Modlin v. Cane*, CFTC No. 97-R083, 1998 WL 429622, at \*8 (July 30, 1998)). An introducing broker that fails to disclose that it paid commission kickbacks to an employee of a brokerage customer violates Section 4b(a). *Id.*; see also *SEC v. Savino*, No. 01-CV-2438, 2006 WL 375074, at \*13 (S.D.N.Y. Feb. 16, 2006) (determining that allegations defendant, an employee of a registered broker-dealer, concealed from his institutional client kickback payments made to an individual trader at the client in exchange for additional business were sufficient to state a claim under SEC Regulation 10b–5), *remanded on other grounds*, 208 Fed. Appx. 18 (2d Cir. 2006). Here, Webb and Classic omitted material facts to Energy Company A by not disclosing Webb’s agreement with Company Trader A that Webb and Broker 1 would pay Company Trader A and Company Trader B kickbacks of brokerage commissions paid by Energy Company A to Classic, in exchange for these Company Traders directing additional brokerage business to Classic.

Webb and Classic also acted with the requisite scienter to support a violation of Section 4b(a). “[S]cienter is established if Defendant intended to defraud, manipulate, or deceive, or if Defendant’s conduct represents an extreme departure from the standards of ordinary care.” *CFTC v. Southern Trust Metals, Inc.*, 894 F.3d 1313 (11th Cir. 2018) (quoting *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002)). Here, Webb’s efforts to conceal these kickback payments—including by paying them in cash or to shell companies and d/b/a entities in the name of relatives of Company Trader A—demonstrates that Webb and Classic intended to defraud, manipulate, or deceive Energy Company A.

Finally, Webb’s and Classic’s payment of kickbacks to the Company Traders from Energy Company A without Energy Company A’s knowledge was material. Secret kickback



arrangements are material because “they are always corrupting.” *SEC v. Baldassarre*, No. 11-CV-5970, 2014 WL 2465622, at \*5 (E.D.N.Y. May 29, 2014) (kickbacks necessarily affect a stockbroker’s judgment) (citing *In re Stephens, Inc.*, 68 S.E.C. Docket 1801, 1998 WL 807950, at \*7 (Nov. 23, 1998)); *Savino*, 2006 WL 375074, at \*13-14 (customer entitled to know that its trader was being promised and given cash, gifts, and gratuities by broker in connection with trades). Energy Company A’s traders were in fact influenced by the kickbacks in deciding to send orders to Classic.

Webb’s and Classic’s violation of Section 4b(a)(1)(A) and (C) as outlined above also violates Section 6(c)(1) and Regulation 180.1(a). See *CFTC v. Hunter Wise*, 21 F. Supp. 3d 1317, 1347-48 (S.D. Fla. 2014) (the same fraudulent conduct that violates Section 4b(a) also violates Section 6(c)(1) and Regulation 180.1(a)).

**D. Classic and Webb Failed To Diligently Supervise Webb and Other Classic Brokers in Violation of Regulation 166.3.**

Regulation 166.3 states:

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

17 C.F.R. § 166.3 (2020). A violation under Regulation 166.3 is an independent violation for which no underlying violation is necessary. See *In re Collins*, CFTC No. 94-13, 1997 WL 761927, at \*10 (Dec. 10, 1997).

A violation of Regulation 166.3 is demonstrated by showing either that: (1) the registrant’s supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In re Murlas Commodities, Inc.*, CFTC No. 85-29, 1995 WL 523563, at \*9 (Sept. 1, 1995); *Sansom Refining Co. v. Drexel Burnham Lambert, Inc.*, CFTC No. 82-R448, 1990 WL 282783, at \*11 (Feb. 16, 1990) (noting that, under Regulation 166.3, an FCM has a “duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents” (internal quotation omitted)); *In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at \*17-19 (Aug. 11, 1992) (providing that, even if an adequate supervisory system is in place, Regulation 166.3 can still be violated if the supervisory system is not diligently administered). Evidence of violations that “should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly” is probative of a failure to diligently supervise. *In re Paragon Futures Assoc.*, CFTC No. 88-18, 1992 WL 74261, at \*14 (Apr. 1, 1992) (“The focus of any proceeding to determine whether Rule 166.3 has been violated will be on whether [a] review [has] occurred and, if it did, whether it was ‘diligent.’”).

From September 4, 2015 through November 7, 2019, Classic was a registered introducing broker and Webb, Classic's president and an associated person, had supervisory duties at Classic. Webb and Classic violated Regulation 166.3 because Classic had no adequate system of oversight in place to detect or deter either the misappropriation of Inside Information from Classic's customers or the payment of kickbacks to certain Company Traders in exchange for more brokerage business. Webb and Classic also violated Regulation 166.3 because Webb himself participated and was aware that other Classic brokers similarly participated in both the misappropriation of Inside Information and the payment of brokerage kickbacks, but did not exercise his supervisory duties to prevent or stop this misconduct.

**E. Webb Lied to ICE in Violation of Section 9(a)(4) of the Act.**

Under Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2018), it is unlawful for:

Any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, swap data repository, or futures association designated or registered under this Act acting in furtherance of its official duties under this Act.

Webb violated Section 9(a)(4) of the Act by knowingly making false statements to ICE, both a registered entity and board of trade, when questioned about the block trades that were the subject of *Classic I*. Specifically, Webb told ICE that he would never take the opposite side of a Classic customer block trade order unless he could make a better market than other market makers. Webb also told ICE that he always presented a customer block trade order to other market makers to determine that market. Webb's statements were false and material because they went to the heart of ICE's investigation into whether Webb used his proprietary trading account MDW to improperly take the other side of Classic block trade customer orders.

**F. Vicarious Liability**

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2020), 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. 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); *Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988).

In order to establish liability under Section 2(a)(1)(B) of the Act and Regulation 1.2, the Commission must show that: (1) Webb was acting as Classic's agent when he engaged in the misconduct above; and (2) Webb's actions were within the scope of his employment or office. *Guttman v. CFTC*, 197 F.3d 33, 39 (2d Cir. 1999). Classic need not have participated in Webb's

conduct or controlled it for the purpose of imposing liability, so long as he was “acting for” Classic at the time. *Id.*

Webb’s duties included receiving and brokering block trade orders from Classic’s customers; including those whose material, non-public information he misappropriated; brokering block trades in return for brokerage commissions; and responding to regulatory inquiries from the registered boards of trade on which Classic conducted its brokerage business. Webb’s misconduct, therefore, was both “for” Classic and within the scope of his agency with Classic. *Id.*<sup>3</sup> Accordingly, pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2, Classic is liable for Webb’s violations of Sections 4c(a)(1)-(2); 6(c)(1); and 9(a)(4) of the Act, and Regulations 166.3 and 180.1(a)(1) and (3).

### **G. Control Person Liability**

Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2018), provides that “[a]ny person who, directly or indirectly, controls any person who has violated any provision of this chapter or any of the rules, regulations, or orders issued pursuant to this chapter may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person.” The “fundamental purpose” of the statute is “to reach behind the corporate entity to the controlling individuals of the corporation and to impose liability for violations of the Act directly on such individuals as well as the corporation itself.” *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1334 (11th Cir. 2002) (citing *JCC, Inc. v. CFTC*, 63 F.3d 1557, 1567 (11th Cir. 1995)). To establish liability, the Commission must show “that the defendant exercised general control over the operation of the entity principally liable and possessed the power or ability to control the specific transaction or activity upon which the primary violation was predicated, even if such power was not exercised.” *CFTC v. Int’l Fin. Servs., Inc.*, 323 F. Supp. 2d 482, 504 (S.D.N.Y. 2004) (quoting *CFTC v. Baragosh*, 278 F.3d 319, 330 (4th Cir. 2002)). Control is “the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.” *In re Spiegel*, CFTC No. 85-19, 1988 WL 232212, at \*4 n.4 (Jan. 12, 1988). “Section 13[(b)], therefore, is about power, and imposing liability for those who fail to exercise it to prevent illegal conduct.” *R.J. Fitzgerald*, 310 F.3d at 1334.

A controlling person is liable for the controlled person’s violations if that controlling person “did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.” Section 13(b) of the Act. Proof of recklessness will demonstrate that the controlling person acted in bad faith, although negligence alone is insufficient. *Monieson v. CFTC*, 996 F.2d 852, 860 (7th Cir. 1993) (finding FCM’s chairman of the board liable as controlling person because he failed to enforce supervision system with reasonable diligence, including failing to act in response to repeated charges of illegal behavior from different sources). “Knowing inducement” requires a showing that “the controlling person had actual or

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<sup>3</sup> Webb’s misappropriation of material, non-public information in connection with the block trades, while benefitting him personally, also benefited Classic by, among other things, earning Classic commissions from the customers’ trades. Similarly, Webb’s participation in the scheme to pay brokerage kickbacks likewise benefitted Classic by resulting in increased commission revenue for Classic.

constructive knowledge of the core activities that constitute the violation at issue and allowed them to continue.” *In re Spiegel*, 1998 WL 232212, at \*7 (footnote omitted).

From at least September 4, 2015 through November 7, 2019, Webb controlled Classic, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Classic’s acts in violation of the Act and Regulations; therefore, under Section 13(b) of the Act, Webb is liable for Classic’s violations of Sections 4b(a)(1)(A), (C); 4c(a)(1)-(2); 6(c)(1); and 9(a)(4) of the Act and Regulations 166.3 and 180.1(a)(1) and (3).

#### **IV. FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that between September 4, 2015 and November 7, 2019, Webb and Classic violated Sections 4b(a)(1)(A), (C); 4c(a)(1)-(2); 6(c)(1); and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C); 6c(a)(1)-(2); 9(1); 13(a)(4) (2018), and Regulations 166.3 and 180.1(a)(1) and (3), 17 C.F.R. §§ 166.3; 180.1(a)(1), (3) (2020).

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

Webb and Classic have submitted an Offer in which they:

- A. Acknowledge service of this Order;
- B. Admit 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. Admit to all of the findings made in this Order;
- D. Waive:
  - 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 they 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 Commission’s Regulations, 17 C.F.R. pt. 148 (2020), relating to, or arising from, this proceeding;

7. Any and all claims that they 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;
- E. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Webb and Classic have consented in the Offer;
- F. Consent to additional proceedings to determine what, if any, civil monetary penalty may be assessed against them. In connection with such additional proceedings, they further consent that: (a) the findings of fact in Section II of this Order shall be accepted as and deemed true by the Presiding Officer; (b) Webb and Classic will be precluded from arguing that they did not violate the federal laws as described in Sections III and IV of this Order; and (c) they may not challenge the validity of their consents and agreements in the Offer or this Order; and
- G. Consent solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Webb and Classic violated Sections 4b(a)(1)(A), (C); 4c(a)(1)-(2); 6(c)(1); and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C); 6c(a)(1)-(2); 9(1); 13(a)(4) (2018), and Regulations 166.3 and 180.1(a)(1) and (3), 17 C.F.R. §§ 166.3; 180.1(a)(1), (3) (2020);
  2. Orders Webb and Classic to cease and desist from violating Sections 4b(a)(1)(A), (C); 4c(a)(1)-(2); 6(c)(1); and 9(a)(4) of the Act, and Regulations 166.3 and 180.1(a)(1) and (3);
  3. Orders that Webb and Classic be permanently 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(4) of the Act, 7 U.S.C. § 1a(40) (2018)), and all registered entities shall refuse them trading privileges; and
  4. Orders Webb and Classic to comply with the conditions, undertakings, and representations consented to in the Offer and set forth in Part VI of this Order, including the undertaking that Webb and Classic pay disgorgement in the amount of five hundred and eighty-five thousand dollars (\$585,000.00), plus post-judgment interest; provided, however, that the disgorgement will be offset by the amount of any criminal forfeiture paid by Webb in *United States v. Webb*, Case No. 4:21-cr-233 (S.D. Tex. filed Apr. 30, 2021), which remains pending, such that the disgorgement and post-judgment interest amount due (to the extent not offset by the amount of any criminal forfeiture paid by Webb in *United States v. Webb*),

if any, shall be paid within ten days after the final due date of the criminal forfeiture paid by Webb in *United States v. Webb*.

Upon consideration, the Commission has determined to accept the Offer.

## VI. ORDER

### Accordingly, IT IS HEREBY ORDERED THAT:

- A. Webb and Classic shall cease and desist from violating Sections 4b(a)(1)(A), (C); 4c(a)(1)-(2); 6(c)(1); and 9(a)(4) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C); 6c(a)(1)-(2); 9(1); 13(a)(4) (2018), and Regulations 166.3 and 180.1(a)(1) and (3); 17 C.F.R. §§ 166.3; 180.1(a)(1), (3) (2020).
- B. Webb and Classic are permanently 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)), and all registered entities shall refuse them trading privileges.
- C. The Commission reserves its determination as to a civil monetary penalty against Webb and Classic at this time based upon their cooperation in a Commission investigation and related proceedings, pursuant to the terms of the cooperation agreement signed by Webb and Classic and dated June 9, 2021 (“Cooperation Agreement”), and their undertaking to continue to cooperate, as set forth in this Order in Part VI.D.4 below. The determination of what, if any, civil monetary penalty may be assessed against them will be made at a public hearing for the purpose of taking evidence and hearing arguments on the issue in accordance with Part 10 of the Commission’s Rules of Practice under the Act (“Rules”), 17 C.F.R. pt. 10 (2020), at a time and place to be fixed as provided in Section 10.61 of the Rules, 17 C.F.R. § 10.61 (2020), except that in the additional proceedings: (a) the findings of fact in Section II of this Order shall be accepted as and deemed true by the Presiding Officer; (b) Webb and Classic will be precluded from arguing that they did not violate the federal laws as described in Sections III and IV of this Order; and (c) Webb and Classic may not challenge the validity of their consents and agreements in the Offer or this Order. All post-hearing procedures shall be conducted pursuant to Sections 10.81-10.107 of the Rules, 17 C.F.R. §§ 10.81-10.107 (2020).
- D. Webb and Classic shall comply with the following conditions and undertakings set forth in the Offer:
  1. Public Statements: Webb and Classic agree that neither they nor any of their agents or employees under their 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 Webb’s and Classic’s (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Webb and

Classic shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

2. Webb and Classic agree that they shall never, 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 (2020)), for their own personal account or for any account in which they have a direct or indirect interest;
  - b. have any commodity interests traded on their 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) (2020); and/or
  - f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2020)), 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) (2018)), registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9).
3. Disgorgement: Webb and Classic agree to pay, on a joint and several basis, disgorgement in the amount of five hundred and eighty-five thousand dollars (\$585,000.00) (“Disgorgement Obligation”), representing the gains received in connection with such violations. If the Disgorgement Obligation is not paid in full within ten days after the final due date of the criminal forfeiture paid by Webb in *United States v. Webb*, then post-judgment interest shall accrue on the Disgorgement Obligation beginning ten days after the final due date of the criminal forfeiture paid by Webb in *United States v. Webb* 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.

However, the Disgorgement Obligation will be offset by the amount of any criminal forfeiture Webb has actually paid in *United States v. Webb*. Webb shall provide (to the persons and addresses listed below) proof of any payment of

criminal forfeiture in *United States v. Webb*, including the case name and number in connection with which such payment has been made, and the amount by which the Disgorgement Obligation is to be reduced, within ten days of making such payment.

Webb and/or Classic shall pay the Disgorgement 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](mailto:9-AMC-AR-CFTC@faa.gov)

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

4. Cooperation with the Commission: Webb and Classic shall cooperate fully and expeditiously with the Commission, including the Division, in accordance with the terms set forth in the Cooperation Agreement, and with any other governmental agency in this action, in any investigation, civil litigation, or administrative proceeding related to the subject matter of this action, or any current or future Division investigation or Commission action related thereto. As part of such cooperation, Webb and Classic agree to:
  - a. preserve and produce to the Commission in a responsive and prompt manner, as requested by Division staff, all relevant, non-privileged documents, information, and other materials wherever located in the appropriate possession, custody, or control of Webb and Classic;

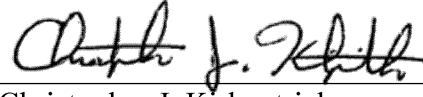


- b. utilize their knowledge and skill to explain transactions, interpret information and terminology, or identify new and productive lines of inquiry;
  - c. prepare for and appear for interviews and testimony at such times and places as requested by Division staff;
  - d. respond completely and truthfully to all inquiries and interviews, when requested to do so by Division staff;
  - e. identify and authenticate relevant documents, executing affidavits or declarations, and testify completely and truthfully at depositions, trial, and other judicial proceedings when requested to do so by Division staff;
  - f. enter into tolling agreements, when requested to do so by Division staff, during the period of cooperation;
  - g. waive any defense based on the statute of limitations applicable to any charges brought in connection with this action;
  - h. accept service by mail, electronic mail, or facsimile transmission of notices or subpoenas for documents and/or testimony;
  - i. appoint Webb's and Classic's attorney as identified in the Offer to receive service of such notices and subpoenas;
  - j. waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules in connection with requests or subpoenas of Division staff; and
  - k. serve by hand delivery or by next-day mail all written notices and correspondence required by or related to this agreement or the Cooperation Agreement to the Director of the Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, NW, Three Lafayette Centre, Washington, DC 20581, unless otherwise directed in writing by Division staff.
5. Partial Satisfaction: Webb and Classic understand and agree that any acceptance by the Commission of any partial payment of their Disgorgement Obligation shall not be deemed a waiver of their 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.
6. Change of Address/Phone: Until such time as Webb and Classic satisfy in full their Disgorgement Obligation as set forth in this Order and their obligations under the Cooperation Agreement, Webb and Classic shall provide written notice

to the Commission by certified mail of any change to their telephone numbers and mailing addresses within ten calendar days of the change.

**The provisions of this Order shall be effective on this date.**

By the Commission.

A handwritten signature in black ink, appearing to read "Christopher J. Kirkpatrick", written over a horizontal line.

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

Dated: June 14, 2021