

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

COMMODITY FUTURES TRADING	)	
COMMISSION,	)	
	)	Case No. 4:21-cv-04023
Plaintiff,	)	
	)	
v.	)	
	)	
PETER MILLER	)	
and OMERTA CAPITAL LLC,	)	
	)	
Defendants.	)	

**AMENDED COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY PENALTIES, RESTITUTION, DISGORGEMENT, AND OTHER EQUITABLE RELIEF**

Plaintiff Commodity Futures Trading Commission (“CFTC”), by and through its undersigned attorneys, alleges as follows:

**I. SUMMARY**

1. From at least August 6, 2015, to September 27, 2019, (the “Relevant Period”), Peter Miller (“Miller”) and Omerta Capital LLC (“Omerta”) engaged in fraudulent schemes to misappropriate material, nonpublic information from two different energy companies, where Miller was the last link in a tipping chain that enabled him, through Omerta, to trade on the basis of this material, nonpublic information, and to enter into fictitious trades at non-bona fide prices.

2. One of the fraudulent schemes generally operated in the following manner. From at least August 6, 2015 through at least December 28, 2018, an energy trader (“Company Trader A”) working for an energy company (“Energy Company 1”) disclosed Energy Company 1’s block trade order information in natural gas futures contracts listed on the New York Mercantile Exchange (“NYMEX”), a Division of CME Group, Inc. (“CME”), including the prices and quantities at which Energy Company 1 would trade. Company Trader A disclosed this

information to Mathew Webb (“Webb”), the President of, and also a broker with, Classic Energy LLC (“Classic”), with the intention that Webb would subsequently disclose it to Miller, trading through Omerta, a proprietary trading company he owned. Miller, through Omerta, then entered into fictitious, non-arm’s length trades with Energy Company 1—on the basis of Energy Company 1’s material, nonpublic information as disclosed by Company Trader A to Webb, and then Webb to Miller—at advantageous prices that enabled Miller and Omerta to generate a profit. Miller then shared these profits with Webb and Company Trader A.

3. In approximately April 2017, Company Trader A was promoted to an executive position within Energy Company 1, and according to company policy was no longer permitted to place trades on behalf of Energy Company 1. At this point, Company Trader A then directed another trader at Energy Company 1 under his supervision (“Company Trader B”) to disclose similar block trade order information to Classic and Webb (and then later an additional broker at Classic (“Broker 1”)), which Webb and Broker 1 then disclosed to Miller. Miller then similarly traded through Omerta on the basis of this material, nonpublic information, and continued to share with the various individuals involved in the fraudulent scheme a portion of the profit from these trades.

4. Shortly after Miller began engaging in the scheme to misappropriate material, nonpublic information from Energy Company 1, Miller began engaging in a similar scheme from at least September 8, 2015 to September 27, 2019 with another energy trader (“Company Trader C”), who disclosed material, nonpublic information belonging to another energy company (“Energy Company 2”). In the same manner as with Energy Company 1, Company Trader A, and Company Trader B; Company Trader C disclosed the material, nonpublic information of Energy Company 2—specifically the prices and quantities at which Energy Company 2 would

trade—either to Webb or another Classic broker (“Broker 2”), with the intention that Webb or Broker 2 would subsequently disclose it to Miller, trading through Omerta. Miller, through Omerta, then entered into fictitious, non-arm’s length trades with Energy Company 2 on the basis of this material, nonpublic information at advantageous prices that enabled Miller and Omerta to generate a profit. Miller then shared these profits with Webb, Broker 2, and/or Company Trader C.

5. To avoid detection and further perpetuate these fraudulent schemes, when interviewed by CME in 2017 about these and related activities, Miller knowingly made false statements of material fact to CME related to his trading in the HH Contract and NG Contract. Specifically, when questioned by CME about why Miller executed NG Contract trades onscreen after receiving a request to provide an offer or bid for a HH Contract block trade, but before the execution of that block trade, Miller denied that he had engaged in this pattern of trading.

6. By engaging in this conduct and further conduct described herein, Miller and Omerta have engaged, are engaging, or about to engage in acts and practices that violate Section 6(c)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 9(1), and Commission Regulation (“Regulation”) 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2021).

7. By this conduct and further conduct described herein, Miller and Omerta have engaged, are engaging, or are about to engage in acts and practices that violate Section 4c(a) of the Act, 7 U.S.C. § 6c(a).

8. By this conduct and further conduct described herein, Miller and Omerta have engaged, are engaging, or are about to engage in acts and practices that violate Section 9(a)(4) of the Act, 7 U.S.C. §13(a)(4).

9. Omerta is vicariously liable for Miller's violations of the Act and Regulations because Miller acted as Omerta's agent when he traded on the basis of material nonpublic information that was misappropriated from Energy Company 1 and Energy Company 2, as well as when he entered into fictitious trades with Energy Company 1 and Energy Company 2 on behalf of Omerta.

10. Miller is liable for Omerta's violations as a controlling person because as Omerta's President, Chairman, and sole trader he had actual or constructive knowledge of Omerta's trading activities that violated the Act and Regulations, and because he did not act in good faith or knowingly induced these same violations through his trading on behalf of Omerta.

11. Accordingly, the CFTC brings this action under Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin Miller's and Omerta's unlawful acts and practices and to compel Miller's and Omerta's compliance with the Act and Regulations. The CFTC also seeks civil monetary penalties, disgorgement of the profits Miller and Omerta obtained through the fraudulent scheme, restitution, trading and registration prohibitions, and any other such equitable and ancillary relief as the Court deems necessary or appropriate under the circumstances.

## **II. JURISDICTION AND VENUE**

12. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 (codifying federal question jurisdiction) and 28 U.S.C. § 1345 (providing that district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress).

13. Section 6c(a) of the Act, 7 U.S.C. § 13a-1 authorizes the CFTC to seek injunctive and other relief against any person whenever it shall appear to the CFTC that such person has

engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act, or any rule, regulation, or order thereunder.

14. Venue lies properly in this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(c), because Defendants Miller and Omerta transacted business in this District, and certain transactions, acts, practices, and courses of business in violation of the Act and the Regulations occurred, are occurring, or about to occur in this District, among other places.

### III. THE PARTIES

15. **Plaintiff Commodity Futures Trading Commission** is an independent federal regulatory agency charged by Congress with the administration and enforcement of the Act and the Regulations promulgated thereunder. One of its core responsibilities is to protect the public interest by ensuring the financial integrity of all transactions subject to the Act and Regulations and protecting market participants from fraudulent practices. Section 3(b) of the Act, 7 U.S.C. § 5(b). The CFTC maintains its principal office at Three Lafayette Centre, 1155 21st Street NW, Washington, D.C. 20581.

16. **Defendant Peter Miller** is an individual who resides primarily in San Juan, Puerto Rico. Miller trades natural gas futures contracts through Omerta. Miller is the President, Chairman, and an Authorized Member of Omerta. Miller has never been registered with the CFTC in any capacity.

17. **Defendant Omerta Capital LLC** is a Puerto Rico limited liability company, with its principal place of business in Dorado, Puerto Rico. Omerta is a proprietary trading company that owns the futures trading accounts that Miller used during the Relevant Period to trade natural gas futures contracts and other products. Omerta has never been registered with the CFTC in any capacity.

#### IV. OTHER RELEVANT ENTITIES

18. **Energy Company 1** is a business that engages in energy marketing and trading in North America. Energy Company 1 employs traders who trade natural gas products for the benefit of Energy Company 1's business, including, formerly, Company Trader A and Company Trader B. Energy Company 1 frequently used Classic to broker block trades in natural gas futures contracts. Energy Company 1 has never been registered with the CFTC.

19. **Company Trader A** is a resident of Houston, Texas. From the beginning of the Relevant Period until July 25, 2019, Company Trader A was employed by Energy Company 1 in its office in The Woodlands, Texas. Until April 2017, Company Trader A actively traded on behalf of Energy Company 1 while holding a number of supervisory trading positions at Energy Company 1. In April 2017, Company Trader A was promoted to an executive position within Energy Company 1. Company Trader A has never been registered with the CFTC.

20. **Company Trader B** is a resident of Spring, Texas. During the Relevant Period, Company Trader B traded natural gas futures products on behalf of Energy Company 1. Prior to July 25, 2019, Company Trader B was supervised by Company Trader A. Except for a three-month period that took place before the Relevant Period, Company Trader B has never been registered with the CFTC.

21. **Energy Company 2** is a business that engages in energy pipeline transport, including the transportation of natural gas and oil products. Energy Company 2 employs traders who trade natural gas products for the benefit of Energy Company 2's business including, formerly, Company Trader C. Energy Company 2 has never been registered with the CFTC.

22. **Company Trader C** is a resident of Houston, Texas. During the Relevant Period, Company Trader C traded natural gas futures products on behalf of Energy Company 2. Company Trader C has never been registered with the CFTC in any capacity.

23. **Classic Energy LLC** was a registered introducing broker located in Houston, Texas. Among other services, Classic was a voice broker that brokered block trades for customers in energy futures contracts and other products listed on designated contract markets such as NYMEX. The CFTC issued two separate orders against Classic asserting violations of the Act and Regulations on September 30, 2019, and June 14, 2021. Classic withdrew its registration with the CFTC in 2019, and was permanently barred from registering with the CFTC on June 14, 2021.

24. **Mathew D. Webb** was the founder, President, sole member, and a registered Associated Person of Classic. Webb brokered block trades for Classic customers in natural gas futures contracts listed on NYMEX. The CFTC issued orders against Webb asserting violations of the Act and Regulations on September 30, 2019, and June 14, 2021. Webb's registration with the CFTC was temporarily suspended in 2019, and then on June 14, 2021, Webb was permanently barred from registering with the CFTC.

## V. FACTS

### A. The Fundamentals of the Natural Gas Futures Market Used in the Fraudulent Scheme.

25. Natural gas is an energy commodity traded by buyers and sellers.

26. One way to trade natural gas is to buy or sell a futures contract. A futures contract is an agreement to buy or sell a commodity at a fixed quantity and price for delivery or cash settlement at a specific date and time in the future. Futures contracts are used to assume or shift

price risk and may be satisfied by cash settlement, delivery, or offset. Futures contracts are commonly used to hedge risks or to speculate on the price of physical commodities.

27. Futures contracts are traded on exchanges—designated contract markets regulated by the CFTC—including NYMEX, a subsidiary of CME. NYMEX lists different products for trading, including natural gas futures contracts, and both determines and enforces rules and procedures for trading on its exchange.

28. A trader can place an order to either buy (a “bid”) or to sell (an “offer”) a certain quantity of a specific futures contract. An order is “filled” when a buyer’s bid price and a seller’s offer price match for a particular futures contract. A trader who purchases a futures contract establishes a “long” position, and a trader who sells a futures contract establishes a “short” position.

29. Offsetting trades are opposite transactions for an equal number of contracts of the same delivery month that liquidate a purchase or sale of a futures contract and close the long or short position (i.e., 100 “long” futures contracts are offset by 100 of the same “short” futures contracts). The net gain or loss on the trade is equal to the difference between the price of the futures contracts when the position was opened and the price of the futures contracts when the position was closed, or offset.

30. A spread is the price differential between two futures contracts. A spread may involve two contracts for the same commodity but different delivery months, or two contracts for different commodities. A market participant that trades a spread opens a long position in one contract and a short position in another contract. The market participant hopes to profit from the change in the price differential between the two contracts.

31. Natural gas trades at different prices at different physical delivery points throughout the United States. “Henry Hub”—the delivery location near Louisiana’s Gulf Coast that connects several intrastate and interstate pipelines—is used as the standard pricing reference for many natural gas futures contracts. NYMEX lists multiple futures contracts that are priced based on the price of natural gas at the Henry Hub delivery point during specified time periods, known as delivery months.

32. One such contract is the Henry Hub Natural Gas Futures contract (“NG Contract”). Another such contract is the Natural Gas (Henry Hub) Last-Day Financial Futures contract (“HH Contract”). The NG Contract and the HH Contract are both based on the price of natural gas at the Henry Hub delivery point and identical in nearly all contract specifications. The difference between the NG Contract and the HH Contract is that the NG Contract is physically-settled; meaning that at the expiration of the contract, a person with an open position must take or make delivery of natural gas at the Henry Hub; whereas the HH Contract is financially-settled, meaning that at the expiration of the contract, a person with an open position receives or pays the difference between the price at which they opened the position and the final settlement price. The prices of the NG Contract and the HH Contract are often very close to one another, but are often not identical. CME considers the NG Contract and the HH Contract to be “closely-related” products, meaning that the two contracts are highly correlated, can serve as substitutes for each other, or are functional economic equivalents.

33. Traders can buy or sell the NG Contract or the HH Contract either for a single delivery month or for a “calendar strip” of multiple consecutive delivery months.

34. With limited exceptions, futures contracts are required to be traded openly and competitively. All futures contracts listed and traded on NYMEX, including natural gas futures

contracts, are traded through Globex, the electronic trading platform operated by CME to facilitate electronic trading on CME exchanges. Trading through the Globex platform is colloquially referred to by market participants as trading “onscreen.”

35. One exception is block trades, which are permissible, privately-negotiated transactions that meet certain minimum contract number thresholds set by the exchanges. As reflected by the minimum contract size requirements, block trades are significantly larger in number of contracts and are often used by institutional investors. While block trades are not negotiated on the open market, under exchange rules they are required to be executed at fair and reasonable prices, taking into account, among other factors, the circumstances and prices of the market. All block trades are also required to be reported to NYMEX. Once reported, NYMEX posts publicly the price and quantity at which the block trade was executed, among other data.

**B. Miller Engaged in a Scheme To Defraud Energy Company 1 by Trading on the Basis of Material Nonpublic Information Misappropriated from Energy Company 1.**

**1. Company Trader A Often Traded Natural Gas Futures Contracts Via Block Trades.**

36. Company Trader A was a natural gas trader who held a number of supervisory trading positions at Energy Company 1. In April 2017, Company Trader A was promoted to an executive position within Energy Company 1 and stopped actively trading. Company Trader A served in that capacity until his employment was terminated on July 25, 2019.

37. Before being promoted, Company Trader A traded natural gas futures contracts on behalf of Energy Company 1 on NYMEX. Company Trader A traded these natural gas futures contracts either onscreen through Globex, CME’s electronic trading platform, or as block trades.

38. When trading natural gas futures contracts as block trades on behalf of Energy Company 1, Company Trader A often used voice brokers to locate counterparties and facilitate execution of the block trades.

39. Classic was a voice brokerage firm that facilitated block trades between its customers in, among other things, natural gas futures contracts. Classic's brokers facilitated block trades by soliciting and receiving block trade orders from Classic's customers. Classic brokers would then locate potential counterparties for the block trades either from among Classic's other customers, or from the customers of another voice broker. Once Classic's brokers located a counterparty, and provided the counterparty's bid or offer for the block trade, the block trade was executed when the customer expressed its acceptance of the bid or offer. Brokers then submitted the details of the executed block trade to the exchange clearinghouse for clearing. Brokers earn revenue on these trades by charging their customers a commission for facilitating, executing, and clearing the block trades.

**2. Miller and Other Scheme Participants Developed and Executed a Plan To Defraud Energy Company 1.**

40. In August 2015, while attending the wedding of Company Trader B, Miller had a discussion with Company Trader A and Webb. In this discussion, Company Trader A proposed the fraudulent scheme to Webb and Miller. As part of this scheme, Company Trader A would send to Webb material non-public information regarding the block trade orders in the HH Contract that Energy Company 1 intended to execute, in a manner that appeared similar to how Company Trader A typically communicated with voice brokers. Webb, in turn, understood he was to share this block trade order information with Miller only.

41. As a trader, Miller knew and understood that traders such as Company Trader A typically consider their block trade order information to be highly confidential. Miller further

knew that the information he received from Webb was nonpublic information belonging to Energy Company 1 that Webb disclosed to him for the purpose of arranging a fictitious block trade in furtherance of the scheme.

42. Miller knowingly or recklessly traded on the basis of this material nonpublic information by typically trading the HH Contract and NG Contract through Omerta as a spread; simultaneous or near-simultaneous trades for the same volume, but in opposite directions. Miller executed trades in the NG Contract (typically onscreen) and, at or near the same time, executed a fictitious, non-arm's length block trade with Energy Company 1 in the HH Contract at a price of his choosing. By trading on the basis of Energy Company 1's information, Miller was able to time his execution of trades in the NG Contract and select a price for the block trade in the HH Contract that enabled Omerta to generate trading profits on Miller's NG Contract/HH Contract spread trades. As part of the scheme, Miller shared these trading profits with both Company Trader A and Webb.

**3. Company Trader A Had a Duty To Keep Confidential Energy Company 1's Block Trade Order Information.**

43. Participants in the block trade market consider their block trade orders and any other confidential information they provide to voice brokers regarding their trading intentions to be material, nonpublic information. Through his employment with Energy Company 1, Company Trader A developed and had access to Energy Company 1's information regarding what block trade orders it would place and the prices and quantities at which Energy Company 1 was willing to execute a block trade. Company Trader A considered this information to be material, nonpublic information.

44. As an employee of Energy Company 1, Company Trader A had a duty to keep this block trade order information confidential and disclose it to the voice brokers used by

Energy Company 1 for the purpose of locating potential block trade counterparties and executing block trades for the benefit of Energy Company 1.

45. Under the employment agreements, policies, and procedures that governed Company Trader A's employment with Energy Company 1, Company Trader A agreed and had a duty to keep confidential, nonpublic information belonging to Energy Company 1 and not to disclose it to unauthorized persons or use it for any purpose other than performing his duties as an employee of Energy Company 1. Under these agreements, policies, and procedures, all information of a confidential, proprietary, or secret nature that is related in any way to the business of Energy Company 1 was considered confidential, nonpublic information.

**4. Company Trader A Breached His Duty to Energy Company 1 By Disclosing Its Block Trade Order Information to Webb, Who in Turn Disclosed This Information to Miller.**

46. Company Trader A typically traded the HH Contract either for a single delivery month, as a calendar strip of multiple delivery months, or as a calendar spread between two delivery months. Miller, Webb, and Company Trader A agreed that Company Trader A would signal to Webb that he wanted to trade in furtherance of the fraudulent scheme by giving Webb a block trade request for a single delivery month, as opposed to a calendar strip or calendar spread. When Company Trader A disclosed to Webb a block trade order for the HH Contract for a single delivery month, Webb would disclose this block trade order information to Miller only, instead of soliciting bids and/or offers from among multiple Classic customers, as was his typical practice.

47. Company Trader A knew and understood that when he disclosed a single-month HH Contract order to Webb that Webb would provide this information to Miller only. Company Trader A further knew and understood that Miller would trade on the basis of this information in

the manner described below. Company Trader A disclosed this information knowing and understanding that he would share in the profits Omerta generated from trading on the basis of this information.

48. Similarly, Webb knew and understood that when Company Trader A disclosed a single-month HH Contract order to him, Company Trader A intended for Webb to share the order with Miller only. As a voice broker, Webb knew and understood that traders consider their block trade order information to be highly confidential. Webb further knew and understood that traders disclose this block trade order information to voice brokers for the limited purpose of locating potential counterparties to a block trade and do expect voice brokers will not disclose the identity of the trader or firm placing the order. Webb further knew and understood that when Company Trader A shared Energy Company 1's order information with him, Company Trader A was not using Classic to locate counterparties and execute block trades in the ordinary course of his business for Energy Company 1, but rather in furtherance of the scheme.

49. Webb disclosed this information to Miller knowing and understanding that Webb would also share in the profits Omerta generated from trading on the basis of this information. Webb disclosed this information to Miller also knowing and understanding that he and Classic would benefit from the increased brokerage activity and commission revenue generated by Energy Company 1's and Miller's trading in furtherance of the scheme.

50. In March of 2017, Company Trader A received a promotion within Energy Company 1 and no longer actively traded on its behalf. To continue the scheme, Company Trader A directed Company Trader B, who had worked as a trader underneath Company Trader A, to disclose Energy Company 1's block trade order information to Webb and Broker 1, another Classic broker, in the same manner as Company Trader A had been doing. Accordingly,

Company Trader A directed Company Trader B to disclose this information with the understanding that Webb and Broker 1 would further disclose this information to Miller so that Miller could trade on the basis of this information. Company Trader A knew and understood that he would continue to receive from Miller a share of the profits Omerta generated by trading on the basis of this information disclosed by Company Trader B.

51. Similarly, Webb and Broker 1 knew and understood that they were to disclose the block trade order information they received from Company Trader B to Miller so that Miller could continue to trade in furtherance of the scheme. Webb and Broker 1 disclosed this information knowing and understanding that they and Classic would benefit from the increased brokerage activity and commission revenue generated by Company Trader B's and Miller's trading in furtherance of the scheme.

**5. Miller Traded the NG Contract and HH Contract and Generated Trading Profits for Omerta on the Basis of Energy Company 1's Misappropriated Information.**

52. Miller typically traded in furtherance of the scheme by trading the HH Contract and NG Contract as a spread; simultaneous or near-simultaneous trades for the same volume, but in opposite directions. Miller traded the HH Contract/NG Contract as a spread by buying (or selling) the HH Contract, typically as a block trade, while at approximately the same time selling (or buying) the NG Contract, typically onscreen, all in equal volumes. Miller later offset this position, and thereby realized a profit or a loss, by selling (or buying) the HH Contract and buying (or selling) the NG Contract.

53. By trading in this manner, Omerta generated profits based on the relative movement of the prices of the HH Contract and the NG Contract. For example, if Miller opened a position by buying the HH Contract and selling the NG Contract, at a time when the NG

Contract was trading at a higher price than the HH Contract, Omerta would profit if the price of the NG Contract decreased relative to the HH Contract at the time Miller offset the position. Similarly, if Miller opened a position by selling the HH Contract and buying the NG Contract, again at a time when the NG Contract was trading at a higher price than the HH Contract, Omerta would profit if the price of the NG Contract increased relative to the HH Contract at the time Miller offset the position.

54. By trading on the basis of Energy Company 1's confidential block trade order information provided by Company Trader A (or Company Trader B at the direction of Company Trader A), Miller was able to obtain the price for the HH Contract he needed to make this HH Contract/NG Contract spread trade profitable, regardless of whether that price was available in the market for the HH Contract. In addition to obtaining his desired price on the HH Contract based on Energy Company 1's confidential block trade order information, Miller was also able to make his NG Contract trades—which are highly correlated to HH Contract prices—more profitable (or less unprofitable) than they would have otherwise been had Miller not misappropriated Energy Company 1's confidential block trade order information in the HH Contract.

55. Miller engaged in three principal trading patterns, all involving trading on the basis of information provided by Company Trader A (or Company Trader B at the direction of Company Trader A), when trading the HH Contract/NG Contract as a spread.

56. In the first pattern, Miller opened spread trade positions in the HH Contract and NG Contract with other market participants and closed the HH Contract leg of this position against Energy Company 1. In this pattern, at a time when Miller had an open HH Contract/NG Contract spread position, Company Trader A or B contacted Webb or Broker 1 via instant

message and described the delivery month and quantity of the HH Contract Energy Company 1 was willing to trade, understanding that Webb or Broker 1 would disclose this information only to Miller and not solicit prices from among Classic's brokerage customers. Webb or Broker 1 then contacted Miller, who gave a price for the HH Contract that would close his open HH Contract leg at a favorable price. Company Traders A and B typically accepted whatever price Webb or Broker 1 communicated on behalf of Miller.

57. After Miller received Energy Company 1's block trade order information for the HH Contract from Webb or Broker 1, Miller executed trades onscreen in the NG Contract that closed his open NG Contract leg. Miller typically executed these trades for the NG Contract after receiving the order information from Webb or Broker 1, and before or immediately after Webb or Broker 1 confirmed the execution of the block trade. Miller's trading of the HH Contract and NG Contract closed his open spread position. In most of the instances when Miller engaged in this trading pattern, he generated a trading profit for Omerta.

58. Miller's and Company Trader A's trading on February 23, 2017 illustrates this first pattern. On this day, Miller had an existing open position spread position in the May 2017 NG Contract and May 2017 HH Contract. Specifically, Miller was long (bought) 100 lots in the HH Contract and short (sold) 100 lots in the NG Contract. On February 23, 2017, Miller closed this open position as follows:

- a. At 9:59:12 AM, Company Trader A contacted Webb via IM and told Webb he needed to buy 100 lots of the May 2017 HH Contract.
- b. At 9:59:33 AM, Webb asked Miller to provide an offer for 100 lots of the May 2017 HH Contract.

- c. At 10:03:01 AM, Miller provided Webb with a price of 2.853 for the block trade.
- d. At 10:03:07 AM, Miller purchased 100 lots of the May 2017 NG Contract onscreen, closing his open 100-lot short position in the May 2017 NG Contract.
- e. At 10:03:25 AM, Webb confirmed to Company Trader A that Miller sold 100 lots of the May 2017 HH Contract via a block trade with Company A, closing his open 100-lot long position in the May 2017 HH Contract. Webb reported this trade as having been executed at 10:04:44 AM.
- f. Omerta earned trading profits on these offsetting trades amounting to \$3,370.

59. In the second pattern, Miller opened positions in the HH Contract with block trades opposite Energy Company 1—at advantageous prices for Omerta—after Webb or Broker 1 disclosed to Miller the block trade order information they received from Company Traders A or B in the manner described above. Miller then closed these positions against other market participants, or, in some cases, other participants in the fraudulent scheme. By trading in this manner, Miller was able to open positions at better prices than were otherwise available in the market, and was later able to offset these positions at a profit.

60. Company Trader A's and Miller's trading on January 27, 2017 illustrates this second pattern. Miller opened a position for 100 lots in the February 2017 NG Contract/HH Contract spread, buying the NG Contracts onscreen and selling the HH Contracts via a block trade to Company Trader A. Almost immediately after opening this position, Miller sold 100

lots of the February 2017 NG Contract and bought 100 lots of the February 2017 HH Contract, all onscreen, offsetting this open position:

- a. At 8:13:35 AM, Company Trader A contacted Webb via IM and told Webb he needed to buy 100 lots of the February 2017 HH Contract.
- b. At 8:14:36 AM, Webb asked Miller to provide an offer for 100 lots of the February 2017 HH Contract.
- c. At 8:14:48 AM, Miller provided Webb with a price of 3.282 for the block trade.
- d. At 8:15:39 AM, Webb confirmed to Company Trader A that Miller sold 100 lots of the February 2017 HH Contract via a block trade with Energy Company 1, opening a 100-lot short position in the February 2017 HH Contract. Webb reported this trade as having been executed at 8:15:53 AM.
- e. Between 8:15:21 AM and 8:15:51 AM, Miller purchased 100 lots of the February 2017 NG Contract onscreen, opening a 100-lot long position in the February 2017 NG Contract.
- f. Between 8:16:33 AM and 8:23:37 AM, Miller sold 100 lots of the February 2017 NG Contract onscreen and bought 100 lots of the February 2017 HH Contract onscreen. These onscreen trades offset the open 100-lot NG Contract/HH Contract spread position Miller had just opened on the basis of the block trade order information disclosed by Company Trader A to Webb.

- g. Omerta earned trading profits on these offsetting trades amounting to \$3,320.

61. In the third pattern, Miller both opened and closed positions in the HH Contract with block trades opposite Energy Company 1—at advantageous prices for Omerta—after Webb or Broker 1 disclosed to Miller the block trade order information they received from Company Traders A or B in the manner described above.

62. Company Trader A’s and Miller’s trading on March 2, 2017 illustrates this third pattern. On this day, Miller opened a spread position of 125 lots in the May 2017 NG Contract and May 2017 HH Contract, buying the May 2017 NG Contract onscreen and selling the May 2017 HH Contract via a block trade with Company Trader A. A little over an hour later, Miller sold the May 2017 NG Contract onscreen and bought the May 2017 HH Contract via a block trade with Company Trader A, offsetting his open spread position.

- a. At 8:35:13 AM, Company Trader A contacted Webb via IM and told Webb he needed to buy 125 lots of the May 2017 HH Contract.
- b. At 8:37:05 AM, Webb asked Miller to provide an offer for 125 lots of the May 2017 HH Contract.
- c. At 8:37:18 AM, Miller provided Webb with a price of 2.891 for the block trade.
- d. Between 8:37:44 AM and 8:38:18 AM, Miller purchased 125 lots of the May 2017 NG Contract onscreen, opening a 125-lot long position in the May 2017 NG Contract.
- e. At 8:38:08 AM, Webb confirmed to Company Trader A that Miller sold 125 lots of the May 2017 HH Contract via a block trade with Energy

Company 1, opening a 125-lot short position in the February 2017 HH Contract. Webb reported this block trade as having been executed at 8:38:13.

- f. A little over one hour later, at 9:42:03 AM, Company Trader A contacted Webb via IM and told Webb he now needed to sell 125 lots of the May 2017 HH Contract.
- g. At 9:42:57 AM, Webb asked Miller to provide a bid for 125 lots of the May 2017 HH Contract.
- h. At 9:44:30 AM, Miller provided Webb with a price of 2.87 for the block trade.
- i. At 9:45:04 AM, Miller sold 125 lots of the May 2017 NG Contract onscreen, closing the 125-lot long position in the May 2017 NG Contract he had opened approximately an hour earlier.
- j. At 9:45:13 AM, Webb confirmed to Company Trader A that Miller purchased 125 lots of the May 2017 HH Contract via a block trade with Energy Company 1, closing Miller's 125-lot short position in the May 2017 HH Contract. Webb reported this block trade as having been executed at 9:45:25 AM.
- k. Omerta earned trading profits on these offsetting trades amounting to \$8,040.

63. During the Relevant Period, Miller engaged in a total of 100 events where he opened and closed positions in the HH Contract/NG Contract spread on the basis of block trade order information disclosed by Company Trader A or B. These events involved a total of 103

block trades executed by Company Trader A and 45 block trades executed by Company Trader B at the direction of Company Trader A. Of these 100 events, 85 were profitable for Miller, resulting in a win rate of 85 percent. In total, Miller generated net trading profits of \$1,516,207 on the 100 events when he traded on the basis of Energy Company 1's material, nonpublic information.

64. Miller shared the profits generated in Omerta's trading account with Company Trader A and Webb in the form of cash. Miller typically delivered these cash payments to either Company Trader A or Webb in person in or around Houston, Texas.

**C. Miller Also Engaged in a Scheme To Defraud Energy Company 2 by Trading on the Basis of Material Nonpublic Information Misappropriated by Energy Company 2.**

65. Beginning around September 8, 2015 and continuing until at least September 27, 2019, Miller engaged in a similar scheme by trading in a similar manner with Company Trader C, facilitated by Webb and Broker 2. Company Trader C traded natural gas futures contracts on behalf of Energy Company 2. Company Trader C traded these natural gas futures contracts either "onscreen" through Globex, CME's electronic trading platform, or as block trades. Like Company Traders A and B, through his employment Company Trader C had access to Energy Company 2's information regarding what block trade orders it would place and the prices and quantities at which Energy Company 2 was willing to execute a block trade. Company Trader C considered this information to be material, nonpublic information.

66. Like Company Trader A and Company Trader B, Company Trader C often used voice brokers to locate counterparties and facilitate execution of the block trades in natural gas futures, including Broker 2 at Classic. As an employee of Energy Company 2, Company Trader C had a duty to keep this block trade order information confidential and to disclose it to the voice

brokers used by Energy Company 2 for the purpose of locating potential block trade counterparties and executing block trades for the benefit of Energy Company 2.

67. Under the employment agreements, policies, and procedures that governed Company Trader C's employment with Energy Company 2, Company Trader C agreed and had a duty to keep confidential nonpublic information belonging to Energy Company 2 and not to disclose it to unauthorized persons or use it for any purpose other than performing his duties as an employee of Energy Company 2. Under these agreements, policies, and procedures, all information of a confidential, proprietary, or secret nature that is related in any way to the business of Energy Company 2 was considered confidential, nonpublic information.

68. Company Trader C, Miller, Webb, and Broker 2 agreed that Company Trader C would signal to Webb or Broker 2 that he wanted to trade in furtherance of the fraudulent scheme by giving Webb or Broker 2 a block trade request for a single delivery month, as opposed to a calendar strip or calendar spread. When Company Trader C disclosed to Webb or Broker 2 a block trade order for the HH Contract for a single delivery month, Webb or Broker 2 would disclose this block trade order information to Miller only, instead of soliciting bids and offers from among multiple Classic customers.

69. Company Trader C knew and understood that when he disclosed a single-month HH Contract order to Webb or Broker 2 that Webb or Broker 2 would provide this information to Miller only. Company Trader C further knew and understood that Miller would trade on the basis of this information in a manner similar to that described in Section V.B.4. above regarding the information disclosed by Company Traders A and B. Company Trader C disclosed this information knowing and understanding that he would share in the profits Omerta generated from trading on the basis of this information.

70. Webb and Broker 2 also knew and understood that when Company Trader C disclosed a single-month HH Contract order to them, Company Trader C intended for Webb or Broker 2 to share the order with Miller only. As voice brokers, Webb and Broker 2 knew and understood that traders consider their block trade order information to be highly confidential. Webb and Broker 2 further knew and understood that traders disclose this block trade order information to voice brokers for the limited purpose of locating potential counterparties to a block trade and that traders do expect voice brokers will not disclose the identity of the trader or firm placing the order. Webb and Broker 2 further knew and understood that when Company Trader C shared Energy Company 2's order information with them, Company Trader C was not using Classic to locate counterparties and execute block trades in the ordinary course of his business for Energy Company 2, but rather in furtherance of the scheme.

71. Similarly, Webb and Broker 2 knew and understood that they were to disclose the block trade order information they received from Company Trader C to Miller so that Miller could continue to trade in furtherance of the scheme. Webb and Broker 2 disclosed this information knowing and understanding that they and Classic would benefit from the increased brokerage activity and commission revenue generated by Company Trader C's and Miller's trading in furtherance of the scheme. In addition, Webb and Broker 2 expected to share in the profits Miller generated from his trading in furtherance of the scheme.

72. Miller knew and understood that traders such as Company Trader C consider their block trade order information to be highly confidential. Miller further knew that the information he received from Webb and Broker 2 was nonpublic information belonging to Energy Company 2 that Webb or Broker 2 had a duty to keep confidential, but instead disclosed to Miller for the purpose of arranging a fictitious block trade in furtherance of the scheme.

73. Similar to his trading involving Company Traders A and B from Energy Company 1, Miller knowingly or recklessly traded on the basis of this material nonpublic information when trading with Company Trader C on behalf of Energy Company 2 by typically trading the HH Contract and NG Contract as a spread.

74. By trading on the basis of Energy Company 2's confidential block trade order information provided by Company Trader C, Miller was able to obtain the price for the HH Contract he needed to make this HH Contract/NG Contract spread trade profitable, regardless of whether that price was available in the market for the HH Contract. In addition to obtaining his desired price on the HH Contract based on Energy Company 2's confidential block trade order information, Miller was also able to make his NG Contract trades—which are highly correlated to HH Contract prices—more profitable (or less unprofitable) than they would have otherwise been had Miller not misappropriated Energy Company 2's confidential block trade order information in the HH Contract. By trading in this manner Omerta generated profits based on the relative movement of the prices of the HH Contract and the NG Contract.

75. With respect to Energy Trader C, Miller engaged in three principal trading patterns—all involving trading on the basis of information belonging to Energy Company 2 as provided by Company Trader C—when trading the HH Contract/NG Contract as a spread.

76. In the first pattern, Miller closed spread trade positions in the HH Contract and NG Contract that were opened on a previous day. Miller opened the spread trade positions on a previous day via block trades, typically with either Company Trader C on behalf of Energy Company 2 (in the majority of instances) or with Company Trader A or Company Trader B on behalf of Energy Company 1. In this pattern, at a time when Miller had an open HH Contract/NG Contract spread position, Company Trader C contacted Webb or Broker 2 via

instant message and described the delivery month and quantity of the HH Contract Energy Company 2 was willing to trade, understanding that Webb or Broker 2 would disclose this information only to Miller and not solicit prices from among Classic's brokerage customers. Webb or Broker 2 then contacted Miller, who gave a price for the HH Contract that would close his open HH Contract leg at a favorable price. Company Trader C typically accepted whatever price Webb or Broker 2 communicated on behalf of Miller.

77. After Miller received Energy Company 2's block trade order information for the HH Contract from Webb or Broker 2, Miller executed trades onscreen in the NG Contract that closed his open NG Contract leg. Miller typically executed these trades for the NG Contract after receiving the order information from Webb or Broker 2, and before or immediately after Webb or Broker 2 confirmed the execution of the block trade. Miller's trading of the HH Contract and NG Contract closed his open spread position. In most of the instances when Miller engaged in this trading pattern, he generated a trading profit for Omerta.

78. Miller's and Company Trader C's trading on June 12, 2019 illustrates this first pattern. On this day, Miller had an existing open position spread position in the July 2019 NG Contract and July 2019 HH Contract. Specifically, Miller was short (sold) fifty lots in the HH Contract and long (bought) fifty lots in the NG Contract. On June 12, 2019, Miller closed this open position as follows:

- a. At 11:34:11 AM, Company Trader C contacted Broker 2 via IM and indicated his interest in selling fifty lots of the July 2019 HH Contract. Starting at 11:34:26 AM, Company Trader C, Broker 2 and Miller engaged in various conversations via IM, and, as a result, at 11:35:48 AM Broker 2 confirmed that Miller bought fifty lots of the July 2019 HH

Contract at a price of 2.384, closing Miller's open fifty-lot short position in the July 2019 HH Contract.

- b. From 11:35:48 AM to 11:35:53 AM, Miller sold fifty lots of the July 2019 NG Contract onscreen, closing his open fifty-lot long position in the July 2019 NG Contract.
- c. At 11:36:04 AM, Broker 2 confirmed to Company Trader C that Energy Company 2 sold fifty lots of the July 2019 HH Contract at a price of 2.384. Broker 2 reported the block trade as having been executed at 11:36:04 AM.
- d. Omerta earned trading profits on these offsetting trades amounting to \$2,230.

79. In the second pattern, Miller opened positions in the HH Contract with block trades opposite Energy Company 2—at advantageous prices for Omerta—after Webb or Broker 2 disclosed to Miller the block trade order information they received from Company Trader C in the manner described above. On the same day, Miller then closed these positions against other market participants, or, in some cases, other scheme participants. By trading in this manner, Miller was able to open positions at better prices than were otherwise available in the market, and was later able to offset these positions at a profit.

80. Company Trader C's and Miller's trading on March 28, 2017 illustrates this second pattern. Miller opened a position for fifty lots in the April 2017 NG Contract/HH Contract spread, selling the NG Contracts onscreen and buying the HH Contracts via a block trade to Company Trader C. Almost immediately after opening this position, Miller bought fifty

lots of the April 2017 NG Contract and sold fifty lots of the April 2017 HH Contract, all onscreen, offsetting this open position.

- a. At 8:53:53 AM, Company Trader C contacted Broker 2 via IM and indicated his interest in selling fifty lots of the April 2017 HH Contract. Starting at 8:54:28 AM, Company Trader C, Broker 2, and Miller engaged in various IM conversations, and, as a result, Broker 2 confirmed at 8:55:26 AM that Miller bought fifty lots of the April 2017 HH Contract at a price of 3.06, opening a fifty-lot long position in the April 2017 HH Contract.
- b. From 8:55:28 AM to 8:55:33 AM, Miller sold fifty lots of the April 2017 NG Contract onscreen, opening a fifty-lot short position in the April 2017 NG Contract.
- c. At 8:55:51 AM, Broker 2 confirmed to Company Trader C that Energy Company 2 sold fifty lots of the April 2017 HH Contract for 3.06. Broker 2 reported the block trade as having been executed at 8:55:34 AM.
- d. At 8:56:23 AM, Miller simultaneously bought fifty lots of the April 2017 NG Contract and sold fifty lots of the April 2017 HH Contract onscreen, closing out the open April 2017 HH Contract/NG Contract spread position.
- e. Omerta earned trading profits on these offsetting trades amounting to \$5,050.

81. In the third pattern, Miller both opened and closed positions on the same day in the HH Contract with block trades opposite Energy Company 2—at advantageous prices for

Omerta—after Webb or Broker 2 disclosed to Miller the block trade order information they received from Company Trader C in the manner described above.

82. Company Trader C's and Miller's trading on May 17, 2018 illustrates this third pattern. On this day, Miller opened a total spread position of 100 lots in the October 2018 NG Contract and October 2018 HH Contract by selling the October 2018 NG Contract onscreen and buying the October 2018 HH Contract via multiple block trades with Company Trader C. A few hours later, Miller offset the 100-lot spread position by buying 100 lots of the October 2018 NG Contract onscreen and selling 100 lots of the October 2018 HH Contract via a single block trade with Company Trader C.

- a. At 10:02:55AM, Company Trader C contacted Broker 2 via IM and indicated his interest in selling fifty lots of the October 2018 HH Contract. Starting at 10:03:13 AM, Company Trader C, Broker 2, and Miller engaged in various IM conversations and, as a result, Broker 2 confirmed at 10:03:36 AM that Miller bought fifty lots of the October 2018 HH Contract at a price of 2.848.
- b. Subsequently, from 10:03:40 AM to 10:03:51 AM, Miller sold fifty lots of the October 2018 NG Contract onscreen.
- c. At 10:03:56 AM, Broker 2 confirmed to Company Trader C that Energy Company 2 sold fifty lots of the October 2018 HH Contract at a price of 2.848. Broker 2 reported the block trade as having been executed at 10:03:56 AM.
- d. Approximately eighteen minutes later, at 10:21:06 AM, Company Trader C asked Broker 2 if he could sell an additional fifty lots of the October

2018 HH Contract. From 10:21:37 AM to 10:22:20 AM, Company Trader C, Broker 2, and Miller engaged in various IM conversations, and, as a result, Broker 2 confirmed at 10:22:20 AM that Miller bought an additional fifty lots of the October 2018 HH Contract at a price of 2.855, bringing Miller's open long position in the October 2018 HH Contract to 100 lots.

- e. From 10:22:21 AM to 10:22:31 AM, Miller sold fifty lots of the October 2018 NG Contract onscreen, bringing Miller's open short position in the October 2018 NG Contract to 100 lots.
- f. At 10:22:37 AM, Broker 2 confirmed to Company Trader C that Energy Company 2 sold an additional fifty lots of the October 2018 HH Contract at a price of 2.855. Broker 2 reported the block trade as having been executed at 10:22:37 AM.
- g. Approximately three hours later, at 1:31:37 PM, Company Trader C contacted Broker 2 via IM and indicated his interest in buying 100 lots of the October 2018 HH Contract. Starting at 1:31:54 PM, Company Trader C, Broker 2, and Miller engaged in a series of instant messages, and, as a result, Broker 2 confirmed at 1:34:43 PM that Miller sold 100 lots of the October 2018 HH Contract at a price of 2.881, closing out Miller's 100-lot long position in the October 2018 HH Contract.
- h. From 1:33:03 PM to 1:33:20 PM, Miller bought 100 lots of the October 2018 NG Contract onscreen, closing out his open 100-lot short position in the October 2018 NG Contract. At 1:33:20 PM, Broker 2 confirmed to

Company Trader C that Energy Company 2 bought 100 lots of the October 2018 HH Contract at a price of 2.881. Broker 2 reported the block trade as having been executed at 1:33:20 PM.

- i. Omerta earned trading profits on these offsetting trades amounting to \$4,790.

83. During the Relevant Period, Miller engaged in a total of 577 events where he opened and closed positions in the HH Contract/NG Contract spread on the basis of block trade order information disclosed by Company Trader C. These events involved a total of 2,072 block trades executed with Company Trader C. Of these 577 events, 502 were profitable for Miller, resulting in a win rate of nearly 90 percent. In total, Miller generated net trading profits of \$3,523,842 on the 577 events when he traded on the basis of Energy Company 2's material, nonpublic information.

84. Miller shared the profits generated in Omerta's trading account with Company Trader C, Webb, and Broker 2 in the form of cash. Miller typically delivered these cash payments to either Company Trader C, Webb, or Broker 2 in person in or around Houston, Texas.

**D. Miller and Omerta's Trading Negated Market and Risk and Caused the Reporting of Non-Bona Fide Prices.**

85. By entering into and executing non-arm's length block trades in the manner described above, Miller and Omerta were able to obtain more advantageous prices and negate market risk for Omerta's trades with Energy Company 1 and Energy Company 2, effectively

allowing Miller to select the price or prices he needed to make his HH Contract/NG Contract spread trading strategy profitable.

86. As a result of entering into non-arm's length block trades with Energy Company 1 and Energy Company 2 that negated market risk, Miller and Omerta caused prices to be recorded by NYMEX for those block trades that were not true and bona fide prices.

**E. Miller Made False Statements to CME.**

87. On January 18, 2017, CME interviewed Miller with respect to block trades he executed on behalf of Omerta, to evaluate Miller's "pre-hedged" block trades involving the HH Contract by trading the NG Contract onscreen and on the opposite side of the market after receiving a block trade solicitation but before consummating the block trade. CME Rules at the time prohibited market participants from trading in the same product or a closely-related product on the opposite side of the market after receiving a block trade solicitation but before consummating the block trade.

88. During this January 18, 2017 interview, CME Market Regulation staff questioned Miller about an instance in which trading records appeared to show that Miller had in fact entered an onscreen order to trade the NG Contract before consummating a block trade in the HH Contract brokered by Webb. Miller responded to this line of questioning by stating "I'm sure I did not [pre-hedge], because I don't do that... I don't pre-hedge." Miller later stated that he only makes offsetting, risk-reducing ("hedge") trades after consummating the block trades with his broker.

89. Miller's statements to CME were false. In many of the instances in which Miller engaged in the fraudulent scheme with Clark and Webb or the fraudulent scheme with Company Trader C, Webb, or Broker 2, Miller did in fact enter orders and execute trades onscreen in the

NG Contract after receiving an order information for, but before consummating, a block trade in the HH Contract.

90. For example, on February 17, 2016, Miller received from Webb block trade order information from Company Trader C for fifty lots of the March 2016 HH Contract. Miller bought fifty lots of the March 2016 NG Contract onscreen after receiving this information from Webb, but before confirming with Webb that he sold fifty lots of the March 2016 HH Contract as a block trade:

- a. At 9:24:29 AM, Webb contacted Miller via IM requesting Miller's price to sell fifty lots of the March 2016 HH Contract.
- b. At 9:25:20 AM, Webb gave Miller a bid of 1.918.
- c. At 9:25:22 AM, Miller bought fifty lots of the March 2016 NG Contract.
- d. At 9:25:25 AM, Miller told Webb "sold," consummating the trade for fifty lots of the March 2016 HH Contract at a price of 1.918.

91. Miller's false statements to CME during his January 18, 2017 interview were material because they went to the heart of CME's investigation into whether Miller engaged in pre-hedging of block trades by executing trades onscreen on the opposite side of the market in the NG Contract after receiving a solicitation for, but before consummating, a block trade in the HH Contract.

**F. Omerta is Vicariously Liable for Miller's Violations of the Act and Regulations.**

92. Miller was acting as Omerta's agent when, through Omerta, he traded on the basis of material nonpublic information that was misappropriated from Energy Company 1 and Energy Company 2, and entered into fictitious trades with Company Trader A, Company Trader B, and Company Trader C, all for Omerta's, and ultimately Miller's, personal profit. Miller was also

acting as Omerta's agent when he made false statements to CME regarding trades he executed for the trading account owned by Omerta.

93. Miller acted as Omerta's agent with respect to trading. Miller was the President of, and upon information and belief the only trader employed by, Omerta, whose primary occupation of business was trading. Miller's duties therefore included trading on Omerta's behalf as well as responding to inquiries from the CME and other exchanges regarding Omerta's trading, and Miller's misconduct with respect to trading was therefore both for Omerta, and within the scope of his agency for Omerta.

**G. Miller Was the Controlling Person of Omerta.**

94. For the entirety of the Relevant Period, Miller controlled Omerta, either directly or indirectly, as its President, Chairman, and only trader. Miller made all trading and other business decisions for Omerta.

95. Miller did not act in good faith or knowingly induced, directly or indirectly, Omerta's conduct by trading on the basis of material nonpublic information that was misappropriated from Energy Company 1 and Energy Company 2, by entering into fictitious trades with Energy Company 1 and Energy Company 2, through Company Traders A, B, and C, and by making false statements to CME regarding his trading activity on behalf of Omerta.

**VI. VIOLATIONS OF THE COMMODITY EXCHANGE ACT  
AND CFTC REGULATIONS**

**COUNT ONE**

**Violation of Section 6(c)(1) of the Act, 7 U.S.C. § 9(1)  
and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2021)**

**(Misappropriation of Material Nonpublic Information)**

**(Against Miller and Omerta)**

96. Paragraphs 1 through 95 are realleged and incorporated herein by reference.
97. 7 U.S.C. § 9(1), provides, in relevant part:

It 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 a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the commission shall promulgate . . . .

98. 17 C.F.R § 180.1(a) (2021), provides, in relevant part:

It shall be unlawful for any person, directly or indirectly, 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, 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 . . . .

99. As a trader and later executive for Energy Company 1, Company Trader A possessed material, nonpublic, and confidential information regarding Energy Company 1's plans and intentions to trade natural gas futures contracts, including the quantity of and at what price Energy Company 1 would enter into trades in these contracts.

100. As a trader and later executive for Energy Company 1, Company Trader A owed a duty to Energy Company 1 and was obligated to keep confidential and not misappropriate for his own personal benefit information regarding Energy Company 1's trading strategy, plans, and intentions to trade natural gas futures contracts, including the HH Contract. The employment agreements, policies, and procedures governing Company Trader A's employment with Energy Company 1 also required Company Trader A to keep confidential and not misappropriate for his own personal benefit information regarding Energy Company 1's trading strategy and plans and intentions to trade natural gas futures contracts, including the HH Contract.

101. Company Trader A breached his duty to Energy Company 1 by disclosing to Webb Energy Company 1's material, nonpublic information, with the intent that Webb would further disclose the block trade order information to Miller, that Miller would trade on the basis of this information, and that Company Trader A would share in Miller's profits from this trading.

102. Company Trader A also breached his duty to Energy Company 1 by directing Company Trader B to disclose to Webb or Broker 1 Energy Company 1's material, nonpublic information, with the intent that either Webb or Broker 1 would further disclose the block trade order information to Miller, that Miller would trade on the basis of this information, and that Company Trader A would share in Miller's profits from this trading.

103. During the Relevant Period, Miller and Omerta, in connection with contracts for future delivery on or subject to the rules of any registered entity, intentionally or recklessly traded on the basis of material, nonpublic information of Energy Company 1 as disclosed to Webb and Broker 1 by Company Traders A and B (at Company Trader A's direction), and then by Webb and Broker 1 to Miller, in breach of Company Trader A's pre-existing duty to Energy Company 1, both by entering into block trades with Energy Company 1 in the HH Contract on

the basis of Energy Company 1's confidential block trade order information, and by executing trades onscreen in the NG Contract also on the basis of this confidential block trade order information.

104. Each fraudulent or deceptive act, including each instance in which Miller and Omerta misappropriated and traded on the basis of material, nonpublic information belonging to Energy Company 1 that Company Trader A, or Company Trader B at the direction of Company Trader A, disclosed to Webb or Broker 1, and then by Webb or Broker 1 to Miller, is alleged as a separate and distinct violation of 7 U.S.C. § 9(1), and 17 C.F.R. § 180.1(a)(1) and (3).

105. Similarly, as a trader for Energy Company 2, Company Trader C possessed material, nonpublic, and confidential information regarding Energy Company 2's plans and intentions to trade natural gas futures contracts, including the quantity of and at what price Energy Company 2 would enter into trades in these contracts.

106. As a trader for Energy Company 2, Company Trader C owed a duty to Energy Company 2 and was obligated to keep confidential and not misappropriate for his own personal benefit information regarding Energy Company 2's trading strategy, plans, and intentions to trade natural gas futures contracts, including the HH Contract. The employment agreements, policies, and procedures governing Company Trader C's employment with Energy Company 2 also required Company Trader C to keep confidential and not misappropriate for his own personal benefit information regarding Energy Company 2's trading strategy and plans and intentions to trade natural gas futures contracts, including the HH Contract.

107. Company Trader C breached his duty to Energy Company 2 by disclosing to Webb and Broker 2 Energy Company 2's material, nonpublic information, with the intent that Webb or Broker 2 would further disclose the block trade order information to Miller, that Miller

would trade on the basis of this information, and that Company Trader C would share in Miller's profits from this trading.

108. During the Relevant Period, Miller and Omerta, in connection with contracts for future delivery on or subject to the rules of any registered entity, intentionally or recklessly traded on the basis of material, nonpublic information of Energy Company 2 as disclosed to Webb and Broker 2 by Company Trader C, and then by Webb and Broker 2 to Miller, in breach of Company Trader C's pre-existing duty to Energy Company 2, both by entering into block trades with Energy Company 2 in the HH Contract on the basis of Energy Company 2's confidential block trade order information, and by executing trades onscreen in the NG Contract also on the basis of this confidential block trade order information.

109. Each fraudulent or deceptive act, including each instance in which Miller and Omerta misappropriated and traded on the basis of material, nonpublic information belonging to Energy Company 2 that Company Trader C disclosed to Webb or Broker 2, and then by Webb or Broker 2 to Miller, is alleged as a separate and distinct violation of 7 U.S.C. § 9(1), and 17 C.F.R. § 180.1(a)(1) and (3).

## **COUNT TWO**

### **Violation of Section 4c(a)(1) and (2), 7 U.S.C. § 6c(a)(1), (2)**

#### **(Fictitious Sales)**

#### **(Against Miller and Omerta)**

110. Paragraphs 1 through 95 are realleged and incorporated herein by reference.

111. 7 U.S.C. § 6c(a)(1) provides:

It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2) involving the purchase or sale of any commodity for future

delivery (or any option on such a transaction or option on a commodity) or swap, if the transaction is used or may be used to—

- (A) hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity;
- (B) determine the price basis of any such transaction in interstate commerce in the commodity; or
- (C) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

112. 7 U.S.C. § 6c(a)(2) provides:

A transaction referred to in paragraph (1) is a transaction that—

- (A)(i) is, is of the character of, or is commonly known to the trade as, a ‘wash sale’ or ‘accommodation trade’; or
- (ii) is a fictitious sale; or
- (B) is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.

113. During the Relevant Period, Miller and Omerta violated 7 U.S.C. § 6c(a)(1) and (2) by entering into trades with Energy Company 1 executed by Company Trader A or Company Trader B acting at the direction of Company Trader A via Webb, Broker 1, and Classic that were not executed on an arm’s-length basis. Miller and Omerta also violated 7 U.S.C. § 6c(a)(1) and (2) by entering into trades with Energy Company 2 executed by Company Trader C via Webb, Broker 2, and Classic that were not executed on an arm’s-length basis. Instead the trades were executed at prices selected by Miller that allowed him and Omerta to generate profits trading the HH Contract and NG Contract as a spread.

114. By executing trades in this manner, Miller and Omerta obtained advantageous prices and negated market risk.

115. Miller's and Omerta's conduct therefore caused prices to be reported to or recorded by NYMEX that were not true and bona fide prices in violation of 7 U.S.C. § 6c(a)(2)(B).

116. Each fictitious sale, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of 7 U.S.C. § 6c(a)(1) and (2).

**COUNT THREE**

**Violation of Section 9(a)(4), 7 U.S.C. § 13(a)(4)**

**(False Statements to CME)**

**(Against Miller and Omerta)**

117. Paragraphs 1 through 95 are realleged and incorporated herein by reference.

118. 7 U.S.C. § 13(a)(4) makes it 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 chapter acting in furtherance of its official duties under this chapter.

119. CME is a registered entity as defined by 7 U.S.C. § 1a(40).

120. On or about January 18, 2017, CME Market Regulation staff questioned Miller about Miller's trading; specifically, why Miller entered an onscreen trade before confirming a block trade with Webb for which the onscreen trade operated as an offset. Miller stated that he was certain he had not entered the onscreen trade before consummating the block trade because he does not "pre-hedge."

121. As part of the fraudulent schemes involving Energy Company 1 and Energy Company 2, Miller did in fact pre-hedge block trades in the HH Contract by executing onscreen

trades on the opposite side of the market in the NG Contract after receiving order information for block trades in the HH Contract but before consummating that block trade.

122. By his conduct above, Miller violated 7 U.S.C. § 13(a)(4). Because Miller made these false statements in the course of his employment and agency as trader for Omerta, Miller's false statements are deemed false statements of Omerta pursuant to Section 2(a)(1)(B) of the Act.

123. Each and every instance of a false, fictitious, or fraudulent statement by Miller is alleged herein as a separate and distinct violation of 7 U.S.C. § 13(a)(4).

## **VII. RELIEF REQUESTED**

WHEREFORE, the CFTC respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

A. Find that Peter Miller and Omerta Capital LLC violated Sections 4c(a)(1) and (2), 6(c)(1), and 9(a)(4) of the Act, 7 U.S.C. §§ 4c(a)(1), (2); 6(c)(1); 13(a)(4), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2021).

B. Enter an order of permanent injunction enjoining Miller and Omerta, and their affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with them, who receive actual notice of such order by personal service or otherwise, from engaging in the conduct described above, in violation of 7 U.S.C. §§ 4c(a)(1), (2); 6(c)(1); and 13(a)(4) and 17 C.F.R. § 180.1(a)(1), (3);

C. Enter an order of permanent injunction restraining and enjoining Miller and Omerta, and their affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with them, from directly or indirectly:

1. 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));

2. Entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2021)), for accounts held in Miller’s or Omerta’s name or for accounts in which Miller or Omerta have a direct or indirect interest;
3. Having any commodity interests traded on Miller’s or Omerta’s behalf;
4. Controlling or directing 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;
5. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling of any commodity interests;
6. Applying for registration or claiming exemption from registration with the CFTC in any capacity, and engaging in any activity requiring such registration or exemption from registration with the CFTC except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2021); and
7. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2021)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the CFTC except as provided for in 17 C.F.R. § 4.14(a)(9).

D. Enter an order requiring Miller and Omerta, as well as any third-party transferee and/or successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commission, loans, fees, revenues, and trading profits derived, directly or indirectly, from acts or practices that constitute violations of the Act and Regulations as described herein, including pre-judgment and post-judgment interest;

E. Enter an order requiring Miller and Omerta, as well as any successors thereof, to make full restitution to every person who has sustained losses proximately caused by the violations described herein, including pre-judgment and post-judgment interest.

F. Enter an order directing Miller and Omerta to pay a civil monetary penalty assessed by the Court, in an amount not to exceed the penalty prescribed by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, tit. VII, § 701, 129 Stat. 584, 599-600, *see* Regulation 143.8, 17 C.F.R. § 143.8 (2021), for each violation of the Act and Regulations, described herein;

G. Enter an order requiring Miller and Omerta to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and

H. Enter an order providing such other and further relief as the Court deems proper.

### **VIII. DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial.

Dated: December 1, 2022

Respectfully submitted,

**COMMODITY FUTURES TRADING  
COMMISSION**

*/s/ Thomas L. Simek*

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