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UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:	
Walleye Capital LLC,	
Respondent.	**CFTC Docket No. 23-04**

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 between December 2018 and May 2019 ("Relevant Period"), Walleye Capital LLC ("Respondent" or "Walleye") violated Section 4c(a)(5)(C) of the Commodity Exchange Act ("Act"), 7 U.S.C. §6c(a)(5)(C). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Walleye 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, Walleye has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Walleye consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions ("Order") and acknowledges service of this Order.[1]

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[1] Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, on hundreds of occasions, Trader A, who was at the time employed by Walleye, entered orders in certain soybean complex futures contracts with the intent to cancel those orders before their execution—specifically, soybean futures, soybean meal futures, and soybean oil futures contracts traded on the Chicago Board of Trade ("CBOT"), which is owned and operated by CME Group, Inc. Trader A's conduct violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C). Walleye is derivatively liable for Trader A's misconduct.

In accepting Walleye's Offer, the Commission recognizes the cooperation of Walleye with the Division of Enforcement's ("Division") investigation of this matter. The Commission also acknowledges Walleye's representations concerning its remediation in connection with this matter.

B. RESPONDENT

Walleye Capital LLC is a registered commodity pool operator ("CPO") and commodity trading advisor ("CTA"). It employed Trader A from December 2018 through July 2019.

C. FACTS

1. Soybean Markets

As relevant here, processors crush soybeans into soybean meal and soybean oil. CBOT offers a soybean crush spread futures contract that allows speculators and hedgers to trade the processing costs of converting soybeans into soybean meal and soybean oil. One crush spread futures contract involves ten soybean futures contracts, eleven soybean meal futures contracts, and nine soybean oil futures contracts. The crush spread futures contract replicates a trader buying soybean futures and selling soybean oil and soybean meal futures, or vice versa. Traders may also attempt to replicate the crush spread futures contract through trading directly in the underlying soybean, soybean meal, and soybean oil futures contracts.

Traders also commonly enter into calendar spread trades within the soybean complex. A calendar spread trade involves buying a futures contract in a certain expiration month and selling a futures contract in a different expiration month, or vice versa. Traders may trade calendar spreads through spread contracts or through individual transactions in each futures contract that makes up the calendar spread.

Subject to certain rules and exceptions, CME's Globex matching algorithm will display implied orders, which can be either (1) orders Globex identifies and displays in the soybean spread markets based on orders existing in the outright soybean futures markets; or, conversely, (2) orders Globex identifies and displays in the outright soybeans futures markets based on orders existing in soybean spread markets.

2. Spoofing

During the Relevant Period, on hundreds of occasions, Trader A, who was at the time employed by Walleye, entered orders in soybean, soybean meal, and soybean oil futures contracts on the CBOT with the intent to cancel those orders before their execution. Almost all of these spoofing events involved spoofing within the soybean complex in which Trader A placed spoof orders in one futures contract with the goal of inducing a fill on Trader A's orders placed on the opposite side of the market in a different futures contract—a different soybean product (cross-product spoofing) or a different expiration month (cross-calendar spoofing). A limited number of spoofing events involved single-product spoofing in which Trader A placed spoof orders with the goal of inducing fills on Trader A's orders on the opposite side of the market in the same futures product with same expiration month.

Whether the conduct involved cross-product, cross-calendar, or single-product spoofing, Trader A's conduct followed a similar general pattern consisting generally of: 1) placing a small order of ten or fewer contracts on one side of the market; 2) while the small order was pending in the market, placing an order of fifty or greater contracts that he intended to cancel on the opposite side of the market from the small order; and 3) cancelling the larger order within ten seconds of its placement. The large order that Trader A intended to cancel could be in a different product from, a different calendar month from, or the same contract as the small order on the opposite side of the market. Trader A engaged in this pattern on hundreds of occasions during the Relevant Period.

3. Walleye's Cooperation and Remediation

The Commission recognizes Respondent's cooperation with the Division's investigation and remediation. Once aware of the Division's investigation, Walleye cooperated with the Division, including by quickly analyzing the spoofing events identified by the Division. Walleye has also represented that it enhanced its spoofing surveillance measures, including its monitoring for cross-product, cross-calendar, and single-product spoofing activity.

III. LEGAL DISCUSSION

A. Section 4c(a)(5)(C) of the Act – Spoofing Violations

Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C), makes it unlawful for "[a]ny person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that . . . is, is of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution)." *See, e.g.*, *United States v. Coscia*, 866 F.3d 782, 792-93 (7th Cir. 2017) (holding that because the Act clearly defines spoofing, it provides adequate notice of prohibited conduct), *cert. denied*, 138 S. Ct. 1989 (2018).

As described above, during the Relevant Period, Trader A placed bids and offers for futures contracts listed on the CBOT, a CFTC-registered futures exchange and designated contract market, with the intent to cancel those bids and offers before they were executed. By engaging in this conduct, Trader A violated Section 4c(a)(5)(C) of the Act. *See, e.g.*, *In re*

Delovitch, CFTC No. 20-71, 2020 WL 5876728, at *1-2 (Sept. 30, 2020) (consent order) (finding that trader who placed bids and offers for futures contracts listed on registered entities with the intent to cancel those bids and offers before they were executed violated Section 4c(a)(5)(C) of the Act); *CFTC v. Oystacher*, 203 F. Supp. 3d 934, 942 (N.D. Ill. 2016) (denying motion for judgment on the pleadings, holding that allegations of placing "both bids and offers with the intent to cancel those bids or offers before execution" constitutes "trading behavior [that] falls within the Spoofing Statute's defined prohibition").

B. Respondent Walleye Is Liable for the Acts of Its Agent

Section 2(a)(l)(B) of the Act, 7 U.S.C. § 2(a)(l)(B), and Commission Regulation ("Regulation") 1.2, 17 C.F .R. § 1.2 (2021), 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 or her employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust. Under Section 2(a)(l)(B) and Regulation 1.2, principals are strictly liable for the actions of their agents. *See Rosenthal & Co. v. CFTC,* 802 F.2d 963, 966 (7th Cir. 1986) (principals are strictly liable for the acts of their agents); *see also Dahmen-Ramirez v. CFTC,* 837 F.2d 847, 857-58 (9th Cir. 1988) (same); *CFTC v. Byrnes,* 58 F. Supp.3d 319,324 (S.D.N.Y. 2014) (same). Trader A's spoofing was committed within the scope of Trader A's employment with Walleye. *See, e.g., CFTC v. Int'l Fin. Services (New York) Inc.,* 323 F. Supp.2d 482, 499 n.12 (S.D.N.Y. 2004) (analyzing scope of employment based on the totality of the circumstances). Therefore, Walleye is liable for the acts, omissions, and failures of Trader A, as described above, that constituted violations of Section 4c(a)(5)(C) of the Act.

IV. FINDINGS OF VIOLATION

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

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

A. Acknowledges service of this Order;

B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;

C. Waives:

1. The filing and service of a complaint and notice of hearing;

2. A hearing;

3. All post-hearing procedures;

4. Judicial review by any court;

5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;

6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2021), relating to, or arising from, this proceeding;

7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–53, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and

8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;

D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;

E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:

1. Makes findings by the Commission that Respondent violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C);

2. Orders Respondent to cease and desist from violating Section 4c(a)(5)(C) of the Act;

3. Orders Respondent to pay a civil monetary penalty in the amount of five hundred fifty thousand dollars ($550,000), plus post-judgment interest within thirty days of the date of entry of this Order; and

4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

F. Represents that since learning of the investigation, it has:

1. Updated its annual training for all trading personnel on disruptive trading practices, including spoofing and manipulation, and specifically cross-product and cross-calendar spoofing;

2. Updated its compliance policies and procedures to further address disruptive trading practices, including spoofing and manipulation, and now addresses various forms of cross-product and cross-calendar spoofing schemes; and

3. Enhanced its trading surveillance system, including the implementation of tightened parameters for order placements and cancelations in single commodity futures contracts and related commodity futures contracts in an effort to better identify potential cross-product, cross-calendar, or single-product spoofing conduct.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondent shall cease and desist from violating Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C).

B. Respondent shall pay a civil monetary penalty in the amount of five hundred fifty thousand dollars ($550,000) ("CMP Obligation"), within thirty days of the date of the entry of this Order. If the CMP Obligation is not paid in full within thirty days of the date of entry of this Order, then post-judgment interest shall accrue on the unpaid portion of the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-amc-ar-cftc@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Tonia King or her successor at the above email address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, and to Charles Marvine, Deputy Director, Commodity Futures Trading Commission, 2600 Grand Boulevard, Suite 210, Kansas City, MO 64108.

C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's and/or its agents' and/or employees': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

2. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.

3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.

5. Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with

respect to such insolvency, receivership bankcruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

The provisions of this Order shall be effective as of this date.

By the Commission.

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

Dated: December 12, 2022