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UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Christian Robert Mayer,

Respondent.

CFTC DOCKET NO. 18 –18

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that, from October 29, 2014, to September 28, 2016 (the "Relevant Period"), Christian Robert Mayer ("Mayer" or "Respondent") violated Section 4b(a)(1)(A) and (C) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6b(a)(1)(A), (C) (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions ("Order") and acknowledges service of this Order.[1]

[1] Respondent consents to the use of the findings of fact and conclusions of law in this 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.

III.

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Mayer engaged in a deceptive scheme in which he conducted unauthorized trading, and then transferred the profitable unauthorized trades from two customers' accounts to his personal trading account while leaving losing trades in the customers' accounts. The scheme involved Mayer making unauthorized trades in the accounts of Customers A and B. If the trade resulted in a gain, Mayer would transfer it to his account. If the trade resulted in a loss, Mayer would leave the trade in Customer A's or B's account.

Through these actions, Respondent violated anti-fraud provisions of Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2012), which prohibits, among other things, fraudulent trade allocation schemes such as the one conducted by Respondent.

B. RESPONDENT

Christian Robert Mayer is a resident of Eden Prairie, Minnesota. During the Relevant Period, Mayer was registered with the Commission as an Associated Person ("AP") and commodities trader at a registered Commodity Trading Advisor and Introducing Broker ("the IB") in Minneapolis, Minnesota.

C. FACTS

On October 3, 2016, the IB terminated Mayer's employment and reported to the National Futures Association ("NFA") that the IB had discovered Mayer had been transferring profitable trades from customer accounts into his personal trading account. Specifically, Mayer placed unauthorized day trades in cattle, crude oil, and wheat futures in Customer A's or B's account—without their approval—and, after the trade was filled, he moved profitable trades to his personal trading account. Mayer then logged on to the online portal of the Futures Commission Merchant ("FCM") which carried all the accounts, accessed the transfer section of the portal, and fraudulently indicated that the reason for the trade transfer request was that he had placed the trade in the wrong account.

The following table summarizes Mayer's unauthorized trades and transfers:

	2014	2015	2016	Number of unauthorized trades	Gains transferred to Mayer's Account	Losses left in Customers' Accounts
Customer A	3	60	116	179	$37,940	$62,887
Customer B	0	1	6	7	$767	$3,496
Total	3	61	122	186	$38,707	$66,383

Of the 179 unauthorized trades placed in Customer A's account, Mayer transferred 110 trades to his personal account and left 69 in Customer A's account. Mayer also transferred one losing position from his account to Customer A's account. For Customer B, Mayer transferred three of the seven trades that he placed in Customer B's account to his personal account and left four trades in Customer B's account.

When the IB discovered these unauthorized trades and transfers, it promptly issued checks to Customers A and B to reimburse them for Mayer's fraudulent conduct. The check to Customer A was for $100,827 and the check for Customer B was for $4,263. These checks represented the amount of the losing trades that Mayer left in their trading accounts, plus the profitable trades that Mayer improperly transferred from the customers' accounts to his personal trading account. These amounts came from money paid by Mayer to the IB, for purposes of reimbursing the defrauded customers and repaying the IB for its expenses in investigating this matter.

After discovering Mayer's fraud, the IB immediately terminated Mayer's employment and notified the NFA, which initiated a Business Conduct Committee (BCC) action against Mayer. Mayer has admitted that the facts contained in the BCC Complaint are true and accurate.

IV.

LEGAL DISCUSSION

Mayer Engaged in Trade-Practices Fraud

Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2012), makes it unlawful:

> [F]or any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person . . . (A) to cheat or defraud or attempt to cheat or defraud the other person; [or] (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for . . . the other person . . . .

Section 4b(a) of the Act applies to the futures contracts transactions conducted by Respondent in this matter because they were in or in connection with the making of contracts of sale of a commodity for future delivery made on or subject to the rules of a designated contract market, namely the New York Mercantile Exchange ("NYMEX") for crude oil futures, Chicago Mercantile Exchange ("CME") for cattle futures, and the Chicago Board of Trade ("CBOT") for wheat futures.

Causing deceptive allocation of favorable futures order fills to an account from which one benefits violates Section 4b(a)(1)(A) and (C) of the Act. *See, e.g., In re Thomas Carroll and*

R. Scott Hopkins, CFTC Dkt. No. 11-02, 2010 WL 5136867, at *2-3 (Dec. 10, 2010) (consent order) (scheme defrauded employer by allocating profitable fills to trader's personal account, in violation of Section 4b) (citing *In re GNP Commodities, Inc.*, (1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 (CFTC August 11, 1992), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993); *In re Brian Keane*, CFTC Dkt. No. 09-01, 2008 WL 4527858, at* 1-2 (Oct. 6, 2008) (consent order) (fraudulent trade-allocation scheme involving delay of NYMEX order allocations in order to allow cherry-picking of favorable fills, in violation of Section 4b).

During the Relevant Period, through the conduct described above, Mayer, in or in connection with orders to make and the making of contracts for future delivery made and to be made on or subject to the rules of designated contract markets (the NYMEX, CBOT and CME) for or on behalf of a customer, knowingly and willfully cheated or defrauded, or attempted to cheat or defraud, Customers A and B, in violation of Section 4b(a)(1)(A) and (C) of the Act.

V.

FINDINGS OF VIOLATION

Based upon the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2012).

VI.

OFFER OF SETTLEMENT

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

A. Acknowledges receipt of service of this Order;

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

C. Waives:

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

   2. A hearing;

   3. All post-hearing procedures;

   4. Judicial review by any court;

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

6. Any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this proceeding;

7. Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201-253, 110 Stat. 847, 857-74 (codified as amended in 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;

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, during the Relevant Period, Respondent violated Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2012);

2. Orders Respondent to cease and desist from violating Section 4b(a)(1)(A) and (C) of the Act;

3. Orders Respondent to pay a civil monetary penalty of one hundred thousand dollars ($100,000) plus post-judgment interest;

4. Orders that Respondent be permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), and all registered entities shall refuse Respondent trading privileges; and

5. Orders Respondent and his successors and assigns to comply with the conditions consented to in the Offer and as set forth in Part VII of this Order.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondent shall cease and desist from violating Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2012).

B. Mayer shall pay a civil monetary penalty of one hundred thousand dollars ($100,000) ("CMP Obligation") plus post-judgment interest. If the CMP Obligation is not paid in full within thirty (30) days of the date of entry of this Order, then post-judgment interest shall accrue on 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 (2012).

Respondent shall pay the CMP Obligation within thirty (30) days of the date of entry of the Order by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying 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, DC 20581.

C. Respondent is permanently prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), and all registered entities shall refuse Respondent trading privileges.

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

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

Respondent and his successors and assigns shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.

2. Commodity Interests: Respondent agrees that Respondent shall never, directly or indirectly:

   i. enter into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2017, as amended by 83 Fed. Reg. 7979, 7980 (Feb. 23, 2018))) for Respondent's own personal account(s) or for any account(s) in which Respondent has a direct or indirect interest;

   ii. have any commodity interests traded on Respondent's behalf;

   iii. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;

   iv. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;

   v. apply for registration or claim exemption from registration with the Commission in any capacity, and engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017); and/or

   vi. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2017)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012), registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017).

3. Cooperation with the Commission: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.

4. 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 their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

5. Change of Address/Phone: Until such time as Respondent satisfies in full his

CMP Obligation as set forth in this Consent Order, Respondent shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

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

By the Commission.

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

Dated: August 10, 2018