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

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| **In the Matter of:** | ) | |
| | ) | |
| **Jacob Bourne,** | ) | |
| | ) | **CFTC Docket No. 18-51** |
| **Respondent.** | ) | |
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| | ) | |

**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 on approximately fourteen trading days, from June 15, 2017, to at least July 6, 2017 ("Relevant Period"), Jacob Bourne ("Respondent") violated Section 6(c)(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2018), of the Commission Regulations ("Regulations") promulgated thereunder. 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.

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 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, Respondent mismarked the valuations for inflation swap instruments at a major financial institution (the "Bank") in an attempt to disguise significant trading losses. As discussed in further detail below, Respondent mismarked the inflation swaps by ignoring Bank policy dictating the method for entering end-of-day marks into an internal Bank spreadsheet used for internal asset valuations. After management confronted Respondent about the discrepancies, Respondent attempted to conceal his misconduct by altering historical versions of the Bank's internal spreadsheet to match the marks provided by a third-party brokerage company.

### B. RESPONDENT

Jacob Bourne was a managing director on the Inflation Desk at the Bank from late 2016 until September 2017. Bourne has never been registered with the Commission in any capacity.

### C. FACTS

During the Relevant Period, the Bank had a policy in place that required a designated employee to enter precise marks transmitted by a third-party brokerage company each day into an internal Bank spreadsheet for end-of-day swap valuations for the Inflation Desk. Specifically, each trading day, the responsible employee was required to input the end-of-day brokerage marks into the spreadsheet, export the data from the spreadsheet to other Bank systems, and save the spreadsheet as a new file on an internal shared drive. The employees did not have discretion to enter anything other than the brokerage marks into the spreadsheet for the purpose of formulating the Bank's end-of-day swap valuations.

During the Relevant Period, Respondent was responsible for entering the brokerage marks into the spreadsheet. Respondent was aware of the Bank valuation policy and had sent a description of the valuation procedure to his former assistant stating, "We mark to this every night with no discretion" in reference to the third-party brokerage company marks. However, rather than enter the brokerage marks, Respondent entered marks that failed to match the daily brokerage marks into the spreadsheet for a variety of swaps on numerous days. Because the spreadsheet was used in part to calculate profits and losses, among other things, the mismarks appeared to diminish approximately $13.82 million of Respondent's estimated $16.26 million in recent trading losses.

When confronted by the Bank about the mark variances, Respondent told Bank management that the variance between the brokerage values and the spreadsheet was due to a purported error in the internal spreadsheet. However, spreadsheet metadata revealed that the Respondent, in an attempt to conceal his mismarked entries, corrected the spreadsheets with the actual brokerage values, and resaved the spreadsheets at a later date.

## III. LEGAL DISCUSSION

Under Section 6(c)(1) of the Act it is unlawful for any person, directly or indirectly, to use or employ any manipulative or deceptive device or contrivance in connection with, as relevant here, any swap. 7 U.S.C. § 9(1) (2012). Similarly, Regulation 180.1(a)(1)-(3), in relevant part, makes it unlawful for any person, directly or indirectly, in connection with any swap, to intentionally or recklessly (1) use or employ or attempt to use or employ any manipulative device, scheme, or artifice to defraud; (2) make or attempt to make any untrue or misleading statement or omission of material fact; or (3) engage or attempt to engage in any act or practice, which operates or would operate as a fraud or deceit on any person. 17 C.F.R. § 180.1(a)(1)-(3) (2018).

Mismarking internal books to conceal losses constitutes fraudulent conduct under the Act and Regulations. *See, e.g.*, *CFTC v. Brooks*, No. 13 C 6879 (KMW), 2014 WL 443446, at *4-5 (S.D.N.Y. July 31, 2014) (consent order finding violations of Sections 4b and 6(c)(1) of the Act and Regulation 180.1 when defendant mismarked internal books and records to inflate the profitability of futures positions); *cf. In re Moster*, CFTC No. 09-08, 2009 WL 10460307 (Feb. 11, 2009) (consent order) (finding that trader violated Section 4b of the Act by providing employer with false information to conceal losses); *In re Hartog*, CFTC No. 00-07, 2000 WL 36696725 (Mar. 7, 2000) (consent order) (finding that trader violated Sections 4b and 4c(b) of the Act and Regulation 33.10 by making false statements to the company's board of directors to conceal negative open trade equity and trading losses); *CFTC v. Wang*, No. 1:16-cv-06961, Dkt. No. 18, (S.D.N.Y. Apr. 17, 2017) (consent order fining trader violated Section 4b(a)(1)(B) of the Act by making false entries in company's internal trading records to conceal losses in crude oil futures); *CFTC v. Taylor*, No. 12 CV 8170 (RJS), 2013 WL 5437362, at *4-5 (Aug. 29, 2013) (consent order finding trader violated Section 4b of the Act by preparing false profit and loss statements to conceal losses); *CFTC v. Cassidy*, No. 08-CIV-9962 (GBD), 2009 WL 5454918, at *5 (S.D.N.Y. Nov. 5, 2009) (consent order finding trader violated of Section 4c(b) of the Act and Regulation 33.10 by mismarking options to inflate the value of trading book).

As set forth above, Respondent violated Section 6(c)(1) of the Act, 7 U.S.C. § 9, because he directly employed a manipulative and deceptive device and contrivance in connection with certain inflation swaps that he traded on behalf of the Bank. For the same reasons, Respondent also violated Regulation 180.1(a)(1)-(3) because he intentionally or recklessly (1) used or employed a manipulative device, scheme, or artifice to defraud; (2) made untrue or misleading statements of material fact or omitted to state material facts necessary in order to make the statements made not untrue of misleading; and (3) engaged in acts, practices, or courses of business which operated as a fraud or deceit on the Bank. By this conduct, Respondent violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3).

## IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2018).

## V. OFFER OF SETTLEMENT

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

A. Acknowledges service of this Order;

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

C. Waives:

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

2. A hearing;

3. All post-hearing procedures;

4. Judicial review by any court;

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

6. Any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012), and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the 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, §§ 201-53, 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 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2018);

2. Orders Respondent to cease and desist from violating Section 6(c)(1) of the Act and Regulation 180.1(a)(1)-(3);

3. Orders Respondent to pay a civil monetary penalty in the amount of three-hundred fifty thousand dollars ($350,000), 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 him trading privileges; and

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

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

## VI. ORDER

**Accordingly, IT IS HEREBY ORDERED THAT:**

A. Respondent shall cease and desist from violating Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(1)-(3), 17 C.F.R. § 180.1(a)(1)-(3) (2018).

B. Respondent shall pay a civil monetary penalty in the amount of three-hundred fifty thousand dollars ($350,000) (CMP Obligation), plus post-judgment interest. 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(s) shall pay the CMP Obligation 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, D.C. 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 him trading privileges; and

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

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

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

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

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

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

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

f. 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).

E. 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, this action.

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

G. 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: September 28, 2018