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UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of: **Geneva Trading USA, LLC,** **Respondent.**	)	**CFTC Docket No. 18-37**

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

I. INTRODUCTION

The Commodity Futures Trading Commission ("Commission") has reason to believe that from at least January 2013 through December 2013, and from at least June 1, 2015, through October 21, 2016, Geneva Trading USA, LLC ("Geneva" or "Respondent") violated Section 4c(a)(5)(C) of the Commodity Exchange Act ("Act"), 7 U.S.C. §6c(a)(5)(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 Geneva 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 Sections 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (Order) and acknowledge 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

From at least January 2013 through December 2013, and from at least June 1, 2015, to October 21, 2016, at least three traders from Geneva ("Trader A," "Trader B," and "Trader C")[2], engaged in the disruptive practice of "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution) with respect to one or more of the following futures contracts traded on the Chicago Mercantile Exchange ("CME"): gold, heating oil, RBOB gasoline, platinum, light sweet crude oil, feeder cattle, lean hogs, live cattle, Kansas City wheat, Soft Red Winter wheat, soybean meal, and soybeans. This spoofing conduct violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

In accepting the Offer, the Commission recognizes Geneva's early resolution of this matter in the form of a reduced civil monetary penalty.

B. RESPONDENT

Geneva Trading USA, LLC is a privately-held Illinois limited liability company with its principal place of business in Chicago, Illinois. Geneva USA is a proprietary trading firm and is a member of the CME, but has never been registered with the Commission in any capacity.

C. FACTS

Generally, the Traders manually placed a smaller order on one side of the market at or near the best price (the "Genuine Order") while placing a larger order or series of orders on the opposite side of the market (the "Spoof Orders"). The Genuine Order and Spoof Orders were either exposed to the market at the same time, or in very close time proximity to each other. The Spoof Orders were often modified to avoid getting filled before they were ultimately cancelled. The Traders placed the Spoof Orders to create—or sometimes exacerbate—an imbalance in the order book and to induce other market participants to transact on the Genuine Order. Collectively, the Traders engaged in this conduct regularly, as a pattern and practice.

From at least January 1, 2013, through December 31, 2013, Trader A demonstrated a pattern of trading that constitutes spoofing in the following futures contracts traded on the CME: gold, heating oil, RBOB gasoline, and platinum. For example, on April 24, 2013, Trader A placed multiple buy Spoof Orders totaling over forty lots in the RBOB gasoline futures contract over a five-second time period. The Spoof Orders were placed at price levels 1-4, with the larger ones placed at levels 3 and 4 to avoid being filled. About one second after placing the last Spoof Order, Trader A placed a two-lot sell Genuine Order that was immediately filled. Then, about 300 milliseconds later, Trader A canceled the Spoof Orders.

From at least January 1, 2013, through December 31, 2013, Trader B demonstrated a pattern of trading that constitutes spoofing in the light sweet crude oil futures contract traded on the CME. For example, on May 21, 2013, Trader B placed a 200-lot sell Spoof Order in the light

[2] Traders A, B, and C are referred to collectively as the "Traders."

sweet crude oil contract. Approximately 400 milliseconds later, Trader B placed a 15-lot buy Genuine Order, which was executed within 200 milliseconds. Then, about 200 milliseconds after the Genuine Order was executed, Trader B canceled the 200-lot Spoof Order.

From at least June 1, 2015, through October 21, 2016, Trader C demonstrated a pattern of trading that constitutes spoofing in the following futures contracts traded on the CME: feeder cattle, lean hogs, live cattle, Kansas City wheat, Soft Red Winter wheat, soybean meal, and soybeans. For example, on September 1, 2015, Trader C placed a five-lot sell Genuine Order in the Soft Red Winter wheat contract. Approximately five minutes later, Trader C placed 15 five-lot buy Spoof Orders (totaling 75 lots) over a four-second time period. Two milliseconds after placing his last Spoof Order, Trader C's Genuine Order was filled. About six seconds after his Genuine Order, Trader C modified the Spoof Orders downward (moving them away from the best bid/offer price) and eventually canceled all of the Spoof Orders.

Geneva cooperated throughout the course of the Division's investigation. Geneva also proactively worked to remediate and enhance its compliance systems and policies related to manipulative trading and spoofing. As part of this process, Geneva has revised its policies, updated its training, implemented internal trading surveillance and compliance systems, and retained a full-time Chief Compliance Officer.

III. LEGAL DISCUSSION

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

Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012), 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 also 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*, --- U.S. ---, 2018 WL 747023 (May 14, 2018) (No. 17-1099). As described above, Trader A, Trader B, and Trader C entered into multiple bids or offers on a registered entity with the intent to cancel the bids or offers before execution, in violation of Section 4c(a)(5)(C) of the Act. *See, e.g., id.*

B. Respondents Are Liable for the Acts of Their Respective Agents

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation ("Regulation") 1.2, 17 C.F.R. § 1.2 (2018), provide that the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust. Under Section 2(a)(1)(B) and Regulation 1.2, principals are strictly liable for the actions of their agents. *See, e.g.*, *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986) ("[W]e have no doubt that section 2(a)(1) imposes strict liability on the principal . . . , provided, of course, as the statute also states expressly, that the agent's misconduct was within the scope or (equivalently but more precisely) in furtherance of the agency."); *Dohmen-Ramirez & Wellington Advisory, Inc. v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988) ("We agree with the reasoning of the Seventh Circuit that because the language of section 2(a)(1) expressly imputes the agent's wrongdoing to the principal, it imposes strict liability.").

The Traders engaged in the conduct described herein within the course and scope of their employment or agency at Geneva. Therefore, Geneva is liable for the acts, omissions, and failures of the Traders, as described above, that constituted violations of Section 4c(a)(5)(C) of the Act.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, from at least January 1, 2013, through December 31, 2013, and from at least June 1, 2015, through October 21, 2016, Geneva violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

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 (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 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) (2012);

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 one million five hundred thousand dollars ($1,500,000.00), plus post-judgment interest;

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.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondent and its successors and assigns shall cease and desist from violating Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

B. Respondent shall pay a civil monetary penalty in the amount of one million five hundred thousand dollars ($1,500,000.00) ("CMP Obligation") within ten (10) days of the date of entry of the Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of the 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 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 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: (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. Procedures and Controls to Detect Spoofing Activity: Respondent shall maintain systems and controls reasonably designed to detect spoofing activity by its traders, including, but not limited to, the systems and controls Respondent developed and implemented in response to the spoofing activity that is the subject of this Order.[3] These systems and controls shall, at a minimum, be designed to detect and generate a report regarding patterns of trading that might constitute spoofing activity. Respondent's personnel shall promptly review such reports and follow up as necessary to determine whether spoofing activity has occurred.

3. Training: Respondent shall maintain its training program that provides training, at least annually, addressing the legal requirements of the Act with regard to spoofing, manipulation and attempted manipulation, to be given to employees and agents trading on behalf of or in their capacity as employee or agent of Respondent or other affiliated entities who submit any orders on futures markets, and their supervisors.

[3] These systems and controls include the employment by Respondent of a dedicated full-time Chief Compliance Officer and utilization of internal trading surveillance and compliance systems.

4. <u>Cooperation with the Commission</u>: Respondent shall cooperate fully and expeditiously with the Commission, including the Division, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate with the Commission in any investigation, civil litigation, or administrative matter related to, or arising from, this action. As part of such cooperation, Respondent agrees to:

   i. preserve and produce to the Commission in a responsive and prompt manner, as requested by Division Staff, all non-privileged documents, information, and other materials wherever located, including but not limited to audio files, electronic communications, and trading records and data, in the possession, custody, or control of Respondent;

   ii. comply fully, promptly, completely and truthfully, subject to any legally recognized privilege, with any inquiries or requests for information and documents by the Commission;

   iii. identify and authenticate relevant documents and other evidentiary materials, execute affidavits or declarations, and provide a corporate representative to testify completely and truthfully at depositions, trial, and other judicial proceedings, when requested to do so by the Division Staff;

   iv. use its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondent, regardless of the individual's location and at such a location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial or investigation; and

   v. subject to applicable laws and regulations, use its best efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee or agent of Respondent.

5. <u>Prohibited or Conflicting Undertakings</u>: Should the Undertakings herein be prohibited by, or be contrary to, the provisions of any obligations imposed on Respondent by any presently existing, or hereinafter enacted or promulgated laws, rules, regulations, or regulatory mandates, then Respondent shall promptly transmit notice to the Commission (through the Division) of such prohibition or conflict, and shall meet and confer in good faith with the Commission (through the Division) to reach an agreement regarding possible modifications to the Undertakings herein sufficient to resolve such inconsistent obligations. In the interim, Respondent will abide by the obligations imposed by the laws, rules, regulations, and regulatory mandates. Nothing in these Undertakings shall limit, restrict or narrow any obligations pursuant to the Act or the Commission's Regulations promulgated thereunder, in effect now or in the future.

6. 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.

7. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Consent Order, Respondent shall provide written notice to the Commission by certified mail of any change to its 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 20, 2018