

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:

Kooima & Kaemingk
Commodities, Inc., Lauren
Kaemingk, and Bradley Kooima,

Respondents.

CFTC Docket No. 18-39

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 from January 2012 to February 2016 (“Relevant Period”), Kooima & Kaemingk Commodities, Inc. (“K&K”), Lauren Kaemingk (“Kaemingk”), and Bradley Kooima (“Kooima”) (collectively “Respondents”) violated Sections 4a(e), 4b(a)(1), 4c(b), and 9(a)(4) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6a(e), 6b(a)(1), 6c(b), 13(a)(4) (2012), and Commission Regulations (“Regulations”) 33.10, 166.2, and 166.3, 17 C.F.R. §§ 33.10, 166.2, 166.3 (2018). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents 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, Respondents have submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Act, Making Findings, and Imposing Remedial Sanctions (“Order”) and acknowledge service of this Order.¹

¹ Respondents consent 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. Respondents do 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. Respondents do 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, K&K, a registered Introducing Broker, through two of its associated persons (“AP(s)”), Employee 1 and Kaemingk, engaged in unauthorized trading in so-called “Investment Accounts.” Employee 1 did so in violation of Section 4b(a)(1) of the Act, 7 U.S.C. § 6b(a)(1) (2012), and Regulation 166.2, 17 C.F.R. § 166.2 (2018). Kaemingk did so in violation of Sections 4b(a)(1) and 4c(b) of the Act, 7 U.S.C. §§ 6b(a)(1), 6c(b) (2012), and Regulations 33.10 and 166.2, 17 C.F.R. §§ 33.10, 166.2 (2018). K&K used the term Investment Accounts internally and with customers to describe futures and options trading accounts that were managed by a K&K AP for speculative investment. K&K, however, did not obtain specific authorization from certain customers for particular trades and did not obtain signed powers of attorney from certain customers. During the Relevant Period, Employee 1 and Kaemingk managed a significant number of K&K customers’ Investment Accounts—with Employee 1 causing approximately \$10.3 million in net customer losses, and Kaemingk’s unauthorized trading causing approximately \$1.6 million in net customer losses. Respondents previously reimbursed Employee 1’s and Kaemingk’s customers a total of approximately \$3.2 million—resulting in total unreimbursed customer losses of \$8.7 million.

In August 2014, Employee 1’s unauthorized trading in a customer’s Investment Account exceeded CME Group (“CME”) position limits for the August 2014 live cattle futures contract in violation of Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2012). After discovering Employee 1’s position limit violation and the related unauthorized trading, K&K terminated Employee 1 on August 14, 2014.

In response to the position-limit violation, CME opened an investigation. K&K, through Kaemingk, then engaged in a cover-up to conceal the scope of the unauthorized trading at K&K. Furthermore, during a phone conversation, Kaemingk encouraged the affected customer to provide only limited and incomplete information to CME concerning Employee 1’s discretionary management of the account prior to the position-limit violation, to not provide relevant information concerning K&K’s past reimbursement of the customer for unauthorized trading, and to not provide relevant information concerning Kaemingk’s future discretionary management of the account. At a later point in time, Kaemingk made misleading statements to CME during an interview that misrepresented, among other things, when he first learned of Employee 1’s misconduct. By this conduct, Respondents violated Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2012).

Finally, K&K, through Kaemingk and Kooima, failed to supervise Employee 1’s handling of customer accounts in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2018). Even though Kooima and Kaemingk knew by April 2014 that Employee 1 was engaged in unauthorized trading, they did not stop Employee 1 from trading customer accounts without obtaining specific authorization until K&K terminated Employee 1 in August 2014.

B. RESPONDENTS

Respondent **Kooima & Kaemingk Commodities, Inc.** is an Iowa corporation with its principal place of business located in Sioux Center, Iowa. K&K is registered with the Commission as an Introducing Broker. K&K hired Employee 1 as an AP in May 2008 and terminated Employee 1 on August 14, 2014.

Respondent **Lauren Kaemingk** is a resident of Sioux Center, Iowa. Kaemingk is the Vice President, Secretary, and co-owner of K&K. Kaemingk exercised joint control over K&K, directing its operation and conduct. Kaemingk is registered with the Commission as an AP of K&K.

Respondent **Bradley Kooima** is a resident of Rock Valley, Iowa. Kooima is the President and co-owner of K&K. Kooima exercised joint control over K&K, directing its operation and conduct. Kooima is registered with the Commission as an AP of K&K.

C. FACTS

1. K&K Customarily Introduces Trades in Futures and Options for Hedging Customers' Commercial Risk.

K&K's customer base is almost entirely comprised of local individual farmers and large-scale farming operations. Historically, K&K was a "hedge shop" for its customers, primarily introducing trades in agriculture futures and options to hedge commercial risks associated with the customers' physical agricultural positions. To hedge their commercial risks, K&K's customers would enter into positions in the futures or options markets opposite to positions held in the cash market, thereby minimizing the risk of financial loss from an adverse price change.

Hedge trading is traditionally low-volume trading, as customers typically place a hedge trade to cover their exposure to physical commodities and keep the trade in their account for extended periods of time to track the holding of the underlying physical commodity, *i.e.*, from planting to harvest or, in the case of livestock, from feeding through slaughter. For example, in the case of a cattle feeder, the customer would typically sell (commonly known as short) one live cattle futures contract for approximately every thirty head of cattle being fed for sale. Around the time of sale of the physical cattle, the customer would then buy (commonly known as long) an equal number of live cattle futures contracts—closing or offsetting the futures position. This process often takes many months depending on the age and size of cattle when acquired. By executing these futures transactions in this manner, the customer could protect the physical commodity—the cattle—from price volatility during the months it takes to feed the cattle before sale. Indeed, under CME rules, customer positions that are bona fide hedging positions require less initial margin to establish the positions. As part of K&K's account opening procedures, and also due to its familiarity with its customers from the local farming community, K&K became knowledgeable of its customers' farming activities and investment objectives during the Relevant Period.

2. K&K Fraudulently Solicited Customers To Open Discretionary Trading Accounts by Misrepresenting the Safety and Profitability of Futures and Options Trading Through K&K.

Around January 2012, K&K began soliciting and opening Investment Accounts on behalf of its clients. Between January 26, 2012 and June 20, 2012, K&K held three open houses in its office in which K&K gave presentations to customers and prospective customers concerning hedging and investment strategies for futures and options. During at least one of the three open-house presentations, K&K informed customers that K&K offered Investment Accounts. In the Investment Accounts, K&K would manage the account for speculative purposes without obtaining specific authorization from customers for particular trades and without obtaining written powers of attorney from the customers.

During the open houses, and in follow-up conversations with customers, K&K touted their strong track record of speculative trading profits in Investment Accounts. On one occasion, in July 2014, Kaemingk told a prospective customer that in a fifteen- to twenty-year span, his track record is “pretty darn good” and that “last year we probably were five percent and since the first of the year now we are probably like forty percent or something like that.” When the prospective customer stated that he usually makes about six percent on rental properties and was looking for an investment that would make a return of at least ten to fifteen percent, Kaemingk said, “I think I can probably do that for you.” Such representations of past profitable trading in Investment Accounts could not be substantiated because K&K did not maintain specific records concerning past trading profits or losses in Investment Accounts. Kaemingk also failed to disclose that he reimbursed a number of customers with Investment Accounts for losses.

K&K also misrepresented the risk associated with trading futures and options. In many conversations with customers, K&K touted the Investment Accounts as a good opportunity to fund college savings accounts. Kaemingk told at least one customer that he managed accounts for many customers with children approaching college age as a way to help make money for college expenses and that K&K had a profitable track record trading Investment Accounts. In at least one advertisement, K&K displayed a book open to a page that said, “Supporting Education” alongside a picture of a tractor. The rest of the advertisement included other farm scenes and said, “Rely on us for all your **MARKETING AND INVESTMENT NEEDS!**” and included the names of all of K&K’s APs. By comparing K&K’s Investment Accounts to bank savings accounts and college savings accounts, K&K gave customers the false impression that trading in Investment Accounts would provide low-risk, steady returns.

Once the customers’ Investment Accounts were opened, K&K, through Employee 1 and Kaemingk, engaged in unauthorized trading in futures and options in the accounts.

3. Employee 1 and Kaemingk Engaged in Unauthorized Trading and Managed-Account Fraud in Customers’ Investment Accounts.

During the Relevant Period, Employee 1 and Kaemingk did not obtain specific authorization from customers before executing trades in customers’ Investment Accounts, did not obtain written powers of attorneys from customers that had Investment Accounts, and, in some cases exceeded customers’ oral authorization concerning the size and risk of positions that

Employee 1 and Kaemingk placed in customer accounts. It was not until the spring of 2015 that K&K began obtaining written powers of attorney for some customers' Investment Accounts. Through their conduct, Employee 1 and Kaemingk caused \$8,700,000 in unreimbursed customer losses.

a. Employee 1 Engaged in Unauthorized Trading and Managed-Account Fraud in Customer Accounts and Exceeded CME Position Limits.

Between at least January 2012 and August 14, 2014, Employee 1's unauthorized trading in Investment Accounts resulted in at least twelve customers losing approximately \$10.3 million. While most of the losses occurred in 2014, at least one customer lost \$129,724.72 due to Employee 1's unauthorized trading shortly after the open-house presentations in 2012.

K&K became aware of Employee 1's unauthorized trading by at least April 2014, but did not take adequate action to prevent Employee 1 from engaging in further misconduct.

i. Employee 1 Placed Unauthorized, Speculative Trades in an Account Controlled by a Cattle Feedlot Operator.

Between August 2013 and April 2014, Employee 1 was responsible for accepting orders from Customer A, which operated a cattle feedlot. In connection with its feedlot operations, Customer A allowed its feedlot customers to hedge cattle being fed at Customer A by using Customer A's trading accounts opened through K&K.

Each of Customer A's feedlot customers was assigned a trading subaccount that was titled in Customer A's name. Customer A was responsible for making—and in fact made—all margin payments associated with its feedlot customers' trading activity. Any margin payments were made to Customer A's master account in a single payment, and all the subaccounts were margined on a net basis. When a feedlot customer sold cattle held with Customer A, the feedlot customer's trading subaccount profit (or loss) would be added to (or subtracted from) the final distribution payment to the customer.

Feedlot customers were not permitted to place speculative trades through Customer A's trading accounts, and all trades were required to be approved by Customer A's manager, who would then place the trade through Employee 1 at K&K. Between August 2013 and April 2014, Employee 1 was also a feedlot customer—feeding approximately 200 cattle at Customer A. Employee 1 would need only about six or seven live cattle futures contracts to hedge Employee 1's cattle being fed at Customer A.

Employee 1 managed the trading in Customer A's accounts without obtaining approval from Customer A's manager for transactions placed in Employee 1's subaccounts. Customer A did not provide Employee 1 with a written power of attorney.

Between August 8, 2013 and April 29, 2014, Employee 1 placed a substantial amount of speculative trades in feedlot subaccounts that were assigned for hedging Employee 1's cattle. At its peak, Employee 1 accumulated a short position of approximately 550 live cattle futures contracts in the subaccounts. Employee 1 did not communicate these trades to Customer A's manager prior to placing the trades. Customer A made margin payments of over \$500,000

during that time period for Employee 1's unauthorized trades. Employee 1 also provided false information to Customer A to hide Employee 1's speculative trading by creating and distributing false spreadsheets that allocated margin amounts due from Employee 1's speculative trading in his feedlot subaccounts among other feedlot subaccounts. Since Customer A only made a single margin payment that covered all of the subaccounts, Customer A relied on the information Employee 1 provided to monitor each subaccount's position.

In March and April 2014, Customer A made over \$800,000 in margin payments to its master account. Because of the substantial size of the margin payments, Customer A examined the records corresponding to its trading accounts and discovered that Employee 1 had placed unauthorized trades in Customer A's trading subaccounts. On or around April 29, 2014, Customer A informed K&K of Employee 1's misconduct. On May 1, 2014, K&K wrote a check to Customer A for \$550,000 to partially reimburse Customer A for the losses resulting from Employee 1's unauthorized trading while a more detailed audit of the accounts occurred. On May 6, 2014, K&K wrote Customer A another check for \$177,099.77 for Employee 1's unauthorized trading activity. On May 6, 2014, Employee 1 paid K&K \$177,099.77 to partially reimburse it for the payments K&K made to Customer A.

ii. Employee 1 Caused at Least \$6.6 Million in Losses in Another Customer's Account Through Thousands of Unauthorized Trades.

In April 2014, around the same time K&K discovered Employee 1's unauthorized trades in Customer A's accounts, trading in Customer B's account exceeded the highest levels of trading ever seen in an account at K&K.

Employee 1 managed the trading in Customer B's account without obtaining specific authorization for transactions placed in the account and without obtaining a written power of attorney. Employee 1 engaged in a spread-trading strategy for Customer B. An example of spread trading involves buying contracts in one expiration month and selling an equal amount of contracts in another expiration month. The profit or loss from spread trading is based on the narrowing or widening of the price difference between the two contracts rather than the rise or fall of either contract month alone.

On or around April 24, 2014, CME contacted K&K because Customer B's account exceeded CME position limits for the June 2014 live cattle futures contract—one leg of Customer B's spread position. CME position limits for the live cattle futures contract (all months) at the time was 6,300 contracts. Employee 1 accumulated approximately 6,900 short June 2014 live cattle futures contracts in Customer B's account (and approximately 6,200 long live cattle futures contracts, split among the October and December 2014 contracts, as the other leg of the spread).² After Employee 1 learned of CME's inquiry, Employee 1 had a conversation with Customer B in which Employee 1 explained how Customer B should respond to questions about the trades if CME or the Commission contacted Customer B. Employee 1 specifically instructed Customer B not to volunteer that Employee 1 was directing the trading in the account without a power of attorney.

² Customer B requested and CME granted a Spread Exemption to Customer B.

Kooima and Kaemingk were both aware, by at least April 2014, of Employee 1's mishandling of Customer B's account. For example, when Customer B was reluctant to wire money to maintain the unauthorized positions in the account, K&K began liquidating the positions in the account—prompting K&K's FCM to contact Kooima about Customer B's account. On May 1, 2014, Kooima told its FCM that “there is no question that [Customer B's account has] been overtraded, mismanaged, addressed, and that's an in-house problem that we are addressing on a daily basis every day this week.” On May 5, 2014, Kaemingk spoke to an employee of K&K's trading desk, which is a different Introducing Broker that was involved in handling K&K customer orders, and explained that there were significant problems with Employee 1's trading activity and explicitly discussed Customer A and Customer B. Kaemingk stated that Employee 1 has “gone a little bit rogue on us.” The employee of K&K's trading desk commented that “it's impossible to ignore [Customer B].” In describing Customer B's account, Kaemingk stated that he hoped that Customer B does not “start[] looking at his accounts and see how he's been churned and all that, and you know big commissions.”

Despite Customer B previously instructing Employee 1 to reduce the positions in the account in an orderly manner to minimize losses, Employee 1 continued placing unauthorized trades in Customer B's account during May and June 2014. In June 2014, Customer B left the country for a few weeks and was only available to communicate with Employee 1 intermittently. While Customer B was traveling, Employee 1 continued trading the account without Customer B's authorization. Upon his return, Customer B demanded a meeting with Employee 1, and Kooima to discuss Employee 1's unauthorized trading.

On or about June 23, 2014, Kooima and Employee 1 had a meeting with Customer B. In that meeting, Customer B told Kooima that Employee 1 placed unauthorized trades in the account, which caused millions of dollars in losses. During the meeting, Customer B requested reimbursement from K&K for the unauthorized trading losses. In a telephone call on June 23, 2014, Kooima recounted the meeting to a friend:

Kooima: [Customer B] is going to act like he didn't know what was going on, what he had on, and I would suppose – and I just kind of like wow, boy, I wouldn't understand why, so you don't read those emails? he said “I don't understand the emails.” Didn't get nothing accomplished – he's pissed, and I don't blame him and I don't know quite how much he was getting traded without – I don't know where the – you know what I mean.

Friend: Where the breakdown was at.

Kooima: I don't know where the truth is – it's someplace in the middle I suppose. It's a fucking mess, millions of dollars. Millions.

Friend: He's not on debit though, is he?

Kooima: No, but he'd like his money back.

Friend: He what?

Kooima: I think he'd like his money back.

K&K did not reimburse Customer B. Customer B suffered at least \$6.6 million in losses due to Employee 1's unauthorized trading.

iii. Employee 1's Unauthorized Trading Resulted in a Customer Exceeding Exchange Position Limits in Live Cattle.

Between February 2014 and August 2014, Employee 1 placed unauthorized trades in Customer C's account, which caused Customer C to lose a total of approximately \$1.2 million.

On June 13, 2014, a friend of Customer C informed Kaemingk that Employee 1 was trading Customer C's account without authorization. During the conversation, Kaemingk said that Customer C's account is "on a list that has thrown up a bunch of red flags." Over a month later, Kaemingk and Customer C spoke by telephone for the first time. On July 31, 2014, Customer C told Kaemingk that communication with Employee 1 was "poor" and "lax." During that conversation, Kaemingk offered, and Customer C accepted, reimbursement of \$125,000 to cover a portion of the unauthorized trading losses. In making the offer to pay Customer C \$125,000, Kaemingk first offered to guarantee that amount in profits in the trading account.

On August 1, 2014, Kaemingk, on behalf of K&K, wrote Customer C a check for \$125,000. Kaemingk knew at the time he wrote the check, and Kooima knew by at least August 12, 2014, that the reimbursement to Customer C was for losses related to Employee 1's unauthorized trading.

Between August 6 and 8, 2014, Employee 1 engaged in additional unauthorized trading of Customer C's account. Through Employee 1's trading on these days, Customer C's account accumulated 545 contracts in August 2014 live cattle, which exceeded CME's live cattle spot-month limit of 450 contracts. No exemption from the position limit was available for Customer C's position.

On August 8, 2014, Customer C faced a margin call of over \$1 million. On August 11, 2014, Employee 1 informed Kaemingk and Kooima that the trades were unauthorized and that Customer C was unwilling to pay for the losses in the account. That same day, Kooima liquidated the positions in Customer C's account, resulting in a deficit owed by the customer of approximately \$875,000, losses that K&K reimbursed Customer C.

iv. Employee 1 Placed Unauthorized Trades in Customers' Accounts After Reading a News Story that Employee 1 Believed Would Lead to a Decline in Cattle Prices.

In June 2014, Employee 1 placed unauthorized trades in multiple customer accounts after reading a news report. Employee 1 began speculating in certain Investment Accounts that the live cattle futures contract would decline based on the dissemination of this news report.

Employee 1's trading far exceeded any oral authorization these customers may have provided to Employee 1 to manage their accounts. For example, following the news report, Employee 1 accumulated sixty short October 2014 live cattle futures contracts in Customer D's account. Employee 1 closed the position on June 16, 2014 for a loss of over \$100,000. Around this time, K&K knew that Employee 1 was engaged in unauthorized trading in Customer D's account. On June 18, 2014, in a recorded telephone call with a friend, Kooima described a meeting he had with Employee 1 in which he told Employee 1:

I don't understand how a month ago you could fuck up as bad as you did and have this clear lesson. That was a fireable offense . . . How about unauthorized trading, what the fuck is this [Customer D] kid, who's a one-lot hog trader-hedger doing with 70 fucking cattle on?

In total, Employee 1's unauthorized trading in Customer D's account caused \$138,102 in losses. K&K reimbursed Customer D \$116,020 to cover Employee 1's unauthorized trading. K&K also reimbursed additional customers arising out of Employee 1's unauthorized trading between June and August 2014.

Not all customers that experienced Employee 1's unauthorized trading had their losses reimbursed. In addition to Customer B, discussed above, at least one other customer, Customer E, informed K&K of Employee 1's unauthorized trading only to be told that K&K was not responsible for reimbursing the losses. After K&K terminated Employee 1, Customer E spoke to Kooima and informed him that Customer E suffered a six-figure loss after Employee 1 placed unauthorized trades in Customer E's account and resulted in Customer E obtaining a mortgage on his farm. Kooima told Customer E, "this is your deal" before encouraging Customer E to keep the account with K&K so they could help recoup the losses—saying "there's some element of truth to the old saying, 'if I lost my wallet in the cattle yard, the only place I can hope to find it back is in the cattle yard.'" Customer E suffered \$170,893 in losses from Employee 1's unauthorized trading. K&K did not reimburse Customer E for any of the losses.

In total, Employee 1's unauthorized trading resulted in just under \$8 million in unreimbursed losses, after K&K reimbursed six customers approximately \$2.3 million.

b. Kaemingk Engaged in Unauthorized Trading and Managed-Account Fraud in Customer Accounts.

During the Relevant Period, Kaemingk was engaged in unauthorized trading in several customer accounts. Kaemingk's unauthorized trading caused approximately \$1.6 million in losses.

For example, Kaemingk solicited Customer F to open an Investment Account by claiming that Kaemingk's management of the Investment Account would help the customer make money to pay for Customer F's children's college expenses. In 2014, after Kaemingk had already managed the account for a few years, Kaemingk traded Customer F's Investment Account much more aggressively than he previously did (all without specific authorization and

without a written power of attorney) that caused this customer to lose \$766,769. Kaemingk did not reimburse Customer F for any losses.

Additionally, after K&K terminated Employee 1, Customer C informed Kaemingk that all of Employee 1's trading in 2014 had been unauthorized. Through a series of conversations with Kaemingk, Customer C informed Kaemingk that Customer C actually lost additional money from Employee 1's unauthorized trading, beyond the \$125,000 Customer C received from K&K on July 31, 2014. On August 26, 2014, Customer C and Kaemingk discussed Customer C's prior losses from Employee 1's unauthorized trading. Kaemingk misrepresented that he could recoup the losses through successful trading and that Customer C would not face any margin calls in the future. When Customer C asked about recovering the losses within one year, Kaemingk told Customer C that funding the trading account with "100 [thousand] would kind of be the minimum, but, you know, even 150 [thousand] would be better if we're going to talk a year, you know . . . and 25,000 would be too small to do in a year."

Customer C and Kaemingk entered into an oral agreement that K&K would recoup Customer C's remaining losses over a three-year period if Customer C funded the trading account with \$100,000 for Kaemingk to manage. On December 3, 2014, Customer C deposited \$100,000 into the trading account, and Kaemingk began managing the account. Kaemingk placed the first trade in the account on December 23, 2014, but it was not until June 1, 2015, that K&K obtained a written power of attorney from Customer C. Kaemingk's trading in Customer C's account during this time was unauthorized. K&K eventually reimbursed Customer C \$225,000—the remaining unreimbursed losses Customer C sustained from Kaemingk's and Employee 1's unauthorized trading.

In addition, Kaemingk reimbursed a number of other customers that suffered losses from his management of their Investment Accounts. Between June 26, 2012, and April 29, 2015, Kaemingk reimbursed fourteen different customers a total of \$881,749 for trading losses. The payments ranged between \$10,000 and \$167,439. In some instances, Kaemingk reimbursed the same customer more than once. In total, Kaemingk's unauthorized trading resulted in approximately \$766,000 in unreimbursed losses, after Kaemingk reimbursed the fourteen customers approximately \$880,000.

It was not until the spring of 2015, after K&K was under investigation by CME, that Kaemingk began obtaining written powers of attorney from customers with Investment Accounts.

4. Kaemingk Made False Statements to CME During an Investigation into Employee 1's Misconduct and Told a Customer that the Customer Should Not Disclose the Customer's Investment Account to CME Investigators.

After terminating Employee 1's employment, K&K, through Kaemingk, engaged in an attempt to cover up Employee 1's misconduct through false statements to CME.

On Monday, August 11, 2014, CME emailed K&K's FCM to notify it that Customer C's account exceeded the spot-month position limit for the August 2014 live cattle futures contract. CME requested certain information within five days. K&K's FCM informed CME that, based

on its communications with K&K, Customer C did not authorize the trades that resulted in the position-limit violation, Employee 1 was responsible for placing unauthorized trades in Customer C's account, and Employee 1's employment with K&K was terminated as a result of the trading in Customer C's account. On Wednesday, August 27, 2014, after consultation with K&K, Customer C sent an email to K&K that said, "On the date of Aug 8th 2014 I did not authorize any trades in my [account number] account with [RJO]." K&K, through its attorney, provided this email to CME.

CME conducted interviews of Kaemingk and Customer C, among others, in the course of its investigation. In advance of Customer C's interview, Kaemingk encouraged Customer C to provide only limited and incomplete information to CME about Customer C's Investment Account. For example, Kaemingk told Customer C that it "would help [K&K] out some if we could just stick it to [the August event], and that you don't hint at any problems before that. Maybe they'll come here and audit us or they might see it, but there is no use volunteering" about the unauthorized trading by Employee 1 before August, while also promising to manage Customer C's account in the future, without obtaining specific authorization and without obtaining a power of attorney, to recoup some of the losses that Employee 1 caused through unauthorized trading in 2014.

During his interview with CME, Kaemingk made false statements to CME about Employee 1's misconduct, when he first learned of Employee 1's unauthorized trading, the existence of Investment Accounts at K&K, and the reason for certain payments made to customers.

5. K&K, Kaemingk, and Kooima Did Not Supervise the Handling of K&K's Customer Accounts.

K&K did not have, or did not follow, policies or procedures requiring new customers to sign a written power of attorney before opening Investment Accounts. Also, K&K did not have, or did not follow, policies or procedures requiring its APs to obtain specific authorization from customers before entering orders on behalf of customers in their Investment Accounts.

In at least one instance, Kaemingk explained to a customer that if the customer had an Investment Account in which the AP had discretion to trade the account without a written power of attorney, the customer would not receive a telephone call from one of K&K's administrative staff—which was the typical procedure for customer orders placed over the phone with specific authorization—and that the customer would only be notified of the trades when K&K's FCM emailed the daily account statement to the customer late at night. Moreover, K&K would delay contacting customers for margin payments as long as possible while still being in compliance with its FCM's margin-collection policies. These procedures meant fewer employees were involved in entering and confirming customer orders, and directly reduced K&K's oversight of Investment Accounts. Consequently, Employee 1 was able to enter large orders for customers without K&K's other employees and customers noticing until after the orders were entered, or only when large margin payments were due from customers.

K&K's supervision failures included its disregard of Employee 1's misconduct, even though Kooima and Kaemingk knew, by at least April 2014, that Employee 1 was engaged in

fraudulent conduct. Despite recognizing the severity of Employee 1's misconduct, K&K did not take adequate action to discipline Employee 1 or supervise his management of customer accounts moving forward. On April 30, 2014, Kooima demonstrated that he understood the severity of Employee 1's misconduct, saying that Employee 1's trading was "against the law, [Employee 1] can lose [his] license." On May 1, 2014, in a conversation with the President of Customer A, Kooima expressed his concern that one of Customer A's accountants could "be a tattletale or a whistleblower" and stated his desire to "keep this amongst us." K&K did not terminate Employee 1's employment at that time, and only required that Employee 1 repay K&K for the amounts it paid to Customer A on Employee 1's behalf. In addition, on May 1, 2014, Kooima stated that he was going to have "an interesting meeting today" because K&K was "debating whether [Employee 1] is at either strike two or strike three." The same day, Kooima told an employee of its FCM that there was "no question that [Customer B's account has] been overtraded, mismanaged" after Employee 1 placed thousands of contracts in the account without Customer B's authorization. On May 2, 2014, Kooima stated that he was concerned that K&K might "catch an audit" and "they pick one of the [account] numbers that [Employee 1] is trading like crazy." On June 18, 2014, Kooima said that K&K was not sure what to do "about the termination of [Employee 1's] employment." Even though he stated in the same telephone call that "[i]t's a huge liability for us. . . . he's wrong, what he's doing is wrong," Kooima explained that he faced a dilemma because even if "you fire [Employee 1], then what? [He o]pens up across the street, literally, you know I suppose a guy could threaten him with sanctions, or something, or you know, or we'll turn you in, but hell, you turn him in, you turn me in." Kooima later realized the short-sightedness of K&K's decision not to terminate Employee 1 earlier when he told an acquaintance, on August 12, 2014, that if he fired Employee 1 a few months earlier it would have "saved me \$2.3 million."

K&K, Kooima, and Kaemingk had additional information, even putting aside their actual knowledge of Employee 1's misconduct, which would have allowed them to detect and stop Employee 1's misconduct. Each morning Kooima and Kaemingk received a list of customers that owed margin for their accounts. Customers that owed margin amounts over \$10,000, or accounts that appeared on the margin list for the third consecutive day, appeared in red on the list. On Friday, April 25, 2014, Customer B was listed as owing \$1,302,751.49 in margin. After not appearing on the margin list the next business day, Customer B was listed again on Wednesday, April 30, 2014, as owing \$1,520,314.71 in margin. On Friday, June 13, 2014, K&K's margin list showed that Customer D owed \$163,173.01 in margin and also showed that Customer D had been on the margin list for six consecutive days. By Wednesday, June 18, 2014, Customer D's account appeared on a Debit List that showed Customer D owed \$89,809.02 to cover the losses in Customer D's account after the positions were liquidated. It was this same day, June 18, 2014, when Kooima recounted his confrontation with Employee 1 about the "unauthorized trading" in Customer D's account. On Friday, June 13, 2014, which was the same day Kaemingk received a call about problems in Customer C's account, there were twenty-four different accounts associated with Employee 1 that owed more than \$10,000 in margin. Yet, despite all the warning signs of Employee 1's misconduct, K&K did not contact a single customer to determine whether Employee 1 was engaged in misconduct, and it did not review audio recordings of Employee 1's telephone conversations with customers, even though it possessed them. Moreover, K&K continued to allow Employee 1 to trade customers' Investment Accounts.

III. LEGAL DISCUSSION

A. **Employee 1’s and Kaemingk’s Unauthorized Trading in Investment Accounts Was Fraudulent Conduct in Connection with Futures in Violation of Sections 4b(a)(1)(A) and (C) of the Act and Regulation 166.2, and Kaemingk’s Unauthorized Trading in Investment Accounts Was Fraudulent Conduct in Connection with Options in Violation of Section 4c(b) of the Act and Regulations 33.10 and 166.2.**

Through their operation of Investment Accounts, in which Employee 1 and Kaemingk managed customers’ speculative trading accounts without obtaining specific authorization from customers for particular transactions and without obtaining written powers of attorneys from the customers, Employee 1 violated Section 4b(a)(1)(A) and (C) of the Act, 7 U.S.C. § 6b(a)(1)(A), (C) (2012), and Regulation 166.2, 17 C.F.R. § 166.2 (2018), and Kaemingk violated Sections 4b(a)(1)(A) and (C) and 4c(b) of the Act, 7 U.S.C. §§ 6b(a)(1)(A), (C), 6c(b) (2012), as well as Regulations 33.10 and 166.2, 17 C.F.R. §§ 33.10, 166.2 (2018).

Section 4b(a)(1)(A) and (C) of the Act makes it unlawful:

(1) for 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[.]

Similarly, Section 4c(b) of the Act and Regulation 33.10 make it unlawful to cheat, defraud, or deceive, or attempt to cheat, defraud, or deceive, other persons, by making false, deceptive, or misleading representations and omissions of material facts in the solicitation of investors in or in connection with commodity options transactions. The same fraudulent conduct that violates Section 4b of the Act, if done in connection with commodity options transactions, also violates Section 4c(b) and Regulation 33.10. *See, e.g., CFTC v. Kratville*, 796 F.3d 873, 887 n.8 & 891 n. 12 (8th Cir. 2015) (noting the elemental similarity between Sections 4b and 4c(b) of the Act); *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328-29 (11th Cir. 2002); *CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 445 (D.N.J. 2000) (analyzing Section 4(b)(a) and Section 4c(b) claims together).

Regulation 166.2, prohibits Introducing Brokers and their APs, among others, from effecting a transaction in commodity interests without specific authorization or without written authorization to trade without specific authorization.

1. Employee 1’s Unauthorized Trading in Investment Accounts Violated Section 4b and Regulation 166.2, and Kaemingk’s Unauthorized Trading in Investment Accounts Violated Sections 4b and 4c(b) of the Act and Regulations 33.10 and 166.2.

“[T]he knowing and deliberate execution of unauthorized trades, even if not done out of an evil motive or intent to injure the customer,” violates Section 4b and 4c(b) of the Act and Regulations 33.10 and 166.2. *Cange v. Stolter & Co.*, 826 F.2d 581, 589 (7th Cir. 1987); *see also CFTC v. Morse*, 762 F.2d 60, 62 (8th Cir. 1985); *Ray E. Friedman & Co. v. Jenkins*, 738 F.2d 251, 253 n.4 (8th Cir. 1984). “It is enough that [respondent] acted deliberately, knowing that his acts were unauthorized and contrary to instructions.” *Haltmier v. CFTC*, 554 F.2d 556, 562 (2d Cir. 1977); *see also McIlroy v. Dittmer*, 732 F.2d 98, 101–02 (8th Cir. 1984); *Moll v. Heinold Commodities, Inc.*, No. 86C10249, 1989 WL 58205 (N.D. Ill. May 31, 1989) (denying summary judgment to defendant because there was a material dispute as to whether the failure to disclose that unauthorized trades could be removed from the account was a violation of Section 4b). Sections 4b and 4c(b) “can be violated simply by virtue of a [respondent’s] knowing unauthorized trading.” *Preswick Capital Mgmt. Ltd. v. Peregrine Fin. Grp.*, No. 10-C-23, 2010 WL 4684038, *3 (N.D. Ill. Nov. 12, 2010); *Ray E. Friedman & Co.*, 738 F.2d at 253 n.4.

Employee 1 and Kaemingk knowingly engaged in significant unauthorized trading through Investment Accounts. They managed the Investment Accounts in a discretionary manner without obtaining written powers of attorney from certain customers, they did not obtain specific authorization from customers before placing orders for customers’ Investment Accounts, and they exceeded certain customers’ instructions concerning the size and risk of positions.

2. Employee 1 Made Material Misrepresentations and Omissions in Violation of Section 4b(a)(1)(A) and (C) of the Act, and Kaemingk Made Material Misrepresentations and Omissions in Violation of Sections 4b(a)(1)(A) and (C) and 4c(b) of the Act and Regulation 33.10.

Employee 1 violated Section 4b of the Act, and Kaemingk violated Sections 4b and 4c(b) of the Act and Regulation 33.10, through misrepresentations and omissions, which requires that: (1) misrepresentations or omissions were made; (2) the misrepresentations or omissions were material; and (3) respondents acted with scienter. *Kratville*, 796 F.3d at 891–92 (citing *R.J. Fitzgerald*, 310 F.3d at 1328-29).

a. Employee 1 and Kaemingk Made Misrepresentations and Omissions.

“Whether a misrepresentation has been made depends on the overall message and the common understanding of the information conveyed.” *Kratville*, 796 F.3d at 892 (citation and quotations omitted). A statement is material if “a reasonable investor would consider it important in deciding whether to make an investment.” *Id.* at 895 (quoting *R.J. Fitzgerald*, 310 F.3d at 1328–29); *CFTC v. Commonwealth Fin. Grp.*, 874 F. Supp. 1345, 1353–54 (S.D. Fla. 1994) (noting that “past success and experience are material factors which a reasonable investor would consider when deciding to invest”). Any fact that enables customers to assess independently the risk inherent in their investment and the likelihood of profit is a material fact. *In re Commodities Int’l Corp.*, CFTC No. 83-43, 1997 WL 11543, at *8-9 (Jan. 14, 1997)

(finding that misrepresentations and omissions to customers were material and fraudulent because customers could not properly evaluate their circumstances with regard to risk of loss and opportunity for profit).

Employee 1 and Kaemingk represented to customers that the customers would earn higher returns through Investment Accounts than they would if they left their money in low-interest savings accounts. In many conversations with customers, Kaemingk touted the Investment Accounts as a good opportunity to fund college savings accounts. These misrepresentations also gave customers the false impression that the Investment Accounts were low-risk investments. In one instance, Kaemingk made a statement to a customer in which he offered to “guarantee that [the customer’s account] balance will be at a certain level by a certain date, you know through trades” after Employee 1 caused trading losses for this customer. In another instance, Kaemingk told a customer that he would not face additional margin calls while Kaemingk was managing the account. These representations were false because they misstated the risk of loss from trading futures and options. *See Kratville*, 796 F.3d at 892-93; *see also* 17 C.F.R. § 1.56 (2018). At the same time, Employee 1 and Kaemingk omitted facts concerning customers that suffered significant losses in Investment Accounts and did not disclose Respondents’ reimbursement for those losses.

b. The Misrepresentations and Omissions Were Material

Misrepresentations concerning the profitability of a customer’s investment are generally deemed to be material and violative of the antifraud provisions of the Act. *See, e.g., Kratville*, 796 F.3d at 895; *R&W Tech. Servs. Ltd. v. CFTC*, 205 F.3d 165, 172-73 (5th Cir. 2000); *CFTC v. Carnegie Trading Grp.*, 450 F. Supp. 2d 788, 799 (N.D. Ohio 2006). “Indeed, misrepresentations concerning profit and risk go to the heart of a customer’s investment decision and are therefore material as a matter of law.” *CFTC v. Noble Wealth Data Info. Servs., Inc.*, 90 F. Supp. 2d 676, 686 (D. Md. 2000), *aff’d in part, rev’d in part sub nom. CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002).

The misrepresentations, described above, concerning past profitable trading experience, guaranteed profits, and diminished risk in connection with soliciting and managing Investment Accounts constitute material misrepresentations because they go to the core of the customers’ investment decisions. Employee 1 and Kaemingk also omitted facts concerning customers that suffered significant losses in Investment Accounts, including their failure to disclose the reimbursement for those losses.

c. Employee 1 and Kaemingk Acted with Scienter.

Employee 1 and Kaemingk made material misrepresentations and omitted material facts with the requisite scienter. Scienter requires proof that a respondent committed the alleged wrongful acts intentionally or if a respondent’s “conduct represents an extreme departure from the standards of ordinary care.” *Kratville*, 796 F.3d at 893; *see also CFTC v. Noble Metals Int’l, Inc.*, 67 F.3d 766, 774 (9th Cir. 1995); *Drexel Burnham Lambert Inc. v. CFTC*, 850 F.2d 742, 748 (D.C. Cir. 1988) (holding that recklessness is sufficient to satisfy scienter requirement). The scienter element is established when the conduct involves “highly unreasonable omissions or misrepresentations . . . that present a danger of misleading [customers] which is either known to

the Defendant or so obvious that Defendant must have been aware of it.” *Kratville*, 796 F.3d at 893 (alterations in original) (quoting *R.J. Fitzgerald*, 310 F.3d at 1328); *see also Wasnick v. Refco, Inc.*, 911 F.2d 345, 348 (9th Cir. 1990). The Commission must demonstrate only that a respondent’s actions were “intentional as opposed to accidental.” *Lawrence v. CFTC*, 759 F.2d 767, 773 (9th Cir. 1985).

Employee 1’s and Kaemingk’s conduct satisfies the scienter requirement. First, Employee 1 and Kaemingk regularly represented their profitable track record in managing Investment Accounts, yet did not maintain any records supporting such representations. In the case of Kaemingk, he made representations of past success while omitting facts related to the reimbursement of customers for losses in Investment Accounts. These misrepresentations were, at a minimum, made recklessly. Second, recorded telephone calls detail Kaemingk’s knowledge of Employee 1’s escalating misconduct in 2014. For example, Kaemingk demonstrated that he knew the Investment Accounts were improper when he encouraged a customer to withhold information from CME about how Employee 1 exercised discretion over the customer’s account in the past and how Kaemingk intended to exercise discretion over the account going forward. Employee 1 also demonstrated that Employee 1 knew the conduct was wrong when Employee 1 had a conversation with a customer in which Employee 1 explained how the customer should respond to questions about the discretionary nature of the account, and that the customer should not volunteer that information, if someone from the Commission contacted the customer about the trading activity in the account.

B. Employee 1’s Trading of Customer C’s Account Exceeded CME Position Limits in Live Cattle in Violation of Section 4a(e) of the Act.

Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2012), makes it unlawful for any person to exceed position limits set by a contract market for a futures contract. No proof of scienter is required to establish a violation of Section 4a(e) of the Act. *Saberi v. CFTC*, 488 F.3d 1207, 1212 n.4 (9th Cir. 2007).

CME is a registered entity as defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012), and a designated contract market for trading live cattle futures contracts pursuant to Section 5 of the Act, 7 U.S.C. § 7 (2012). CME Rules 10102.E and 559, in effect for the August 2014 live cattle futures contract, imposed a spot-month position limit of 450 contracts long or short, effective at the close of business on the first business day after the first Friday of the contract month, which in this case was the close of business on Monday, August 4, 2014.

Regulation 150.5(g), 17 C.F.R. § 150.5(g) (2018), provides for aggregation of certain positions in evaluating compliance with position limits established by a designated contract market such as CME:

[i]n determining whether any person has exceeded the limits established [by a designated contract market], all positions in accounts for which such person by power of attorney or otherwise directly or indirectly controls trading shall be included with the positions held by such person; such limits upon positions shall apply to positions held by two or more person[s] acting pursuant to

an express or implied agreement or understanding, the same as if the positions were held by a single person.

The Commission has previously found position limit violations where a trader controls positions in another's account. *See In re McVean Trading & Invs., LLC*, CFTC No. 17-15, 2017 WL 2729956, at *12 (June 21, 2017) (consent order).

Employee 1 controlled the trading in Customer C's trading account, which Employee 1 and K&K treated as an Investment Account. As such, Employee 1 directly or indirectly controlled the positions in Customer C's account within the meaning of Regulation 150.5(g). Those positions, therefore, are treated as Employee 1's positions for purposes of calculating position limits. Employee 1 accumulated a position of 545 August 2014 live cattle futures contracts in Customer C's account on August 8, 2014. At the time, CME's spot-month position limit for the August 2014 live cattle futures contract was 450. The positions remained in the account until the following business day, when on August 11, 2014, Employee 1 informed K&K that the trades were unauthorized and K&K was able to liquidate the positions. As a result, Employee 1 violated Section 4a(e) of the Act.

C. Kaemingk Made False Statements to CME During Its Investigation into Employee 1's and Respondent K&K's Misconduct, and He Encouraged a Customer To Withhold Information from CME in Violation of Section 9(a)(4) of the Act.

Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2012), 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.

As noted above, CME is a registered entity as defined in Section 1a(40) of the Act. On or around August 11, 2014, when Employee 1 exceeded position limits in August live cattle futures contracts in Customer C's account, CME began investigating potential violations of CME rules in furtherance of its official duties under the Act.

Kaemingk violated Section 9(a)(4) of the Act in two ways. First, Kaemingk made multiple false statements to CME investigators during the course of CME's investigation between August 2014 and February 2016. For example, Kaemingk told CME investigators that he first learned that Employee 1 was placing unauthorized trades in certain customer accounts in August 2014. This statement was false because, among other reasons, Kaemingk, in a recorded telephone call in May 2014, stated that he hoped that Customer B does not "start looking at his accounts and see how he's been churned and all that, and you know big commissions."

Second, Kaemingk encouraged Customer C, the affected position-limit customer, to conceal Employee 1's pre-August discretionary trading from CME investigators. In recorded

telephone calls prior to Customer C's scheduled interview with CME, Kaemingk told Customer C, it "would help [K&K] out some if we could just stick it to [the August event], and that you don't hint at any problems before [August]. Maybe they'll come here and audit us and they might see it, but there is no use you volunteering" about the unauthorized trading by Employee 1 before August. The information Kaemingk encouraged Customer C to not volunteer to CME was material to CME's investigation.

D. Respondents K&K, Kooima, and Kaemingk Failed To Supervise Employee 1 in Violation of Regulation 166.3.

Regulation 166.3, 17 C.F.R. § 166.3 (2018), requires that every Commission registrant "diligently supervise the handling by its partners, officers, employees and agents" of all activities relating to its business as a registrant. Regulation 166.3 imposes upon a registrant an affirmative duty to supervise its employees and agents diligently by establishing, implementing, and executing an adequate supervisory structure and compliance program. *Carnegie Trading Grp.*, 450 F. Supp. 2d at 805; *see also* Adoption of Customer Protection Rules, 43 Fed. Reg. 31,886, 31,889 (July 24, 1978) (codified at 17 C.F.R. pt. 1 and 166). For a registrant to fulfill its duties under Regulation 166.3, it must both design an adequate program of supervision and ensure that the program is followed. *See, e.g., In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at *17-19 (Aug. 11, 1992), *aff'd in part and modified sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993).

A violation of Regulation 166.3 is an independent violation for which no underlying violation is necessary. *GNP Commodities*, 1992 WL 201158, at* 17 n.11; *In re Paragon Futures Ass'n*, CFTC No. 88-18, 1992 WL 74261, at *13 (Apr. 1, 1992). Consequently, a violation of Regulation 166.3 "is demonstrated by showing either that: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently." *In re FCStone, LLC*, CFTC No. 15-21, 2015 WL 2066891, at *3 (May 1, 2015) (consent order) (citing *In re Murlas Commodities, Inc.*, CFTC No. 85-29, 1995 WL 523563, at *9 (Sept. 1, 1995)); *see also Paragon*, 1992 WL 74261, at *14 (concluding that the "focus of any proceeding to determine whether Rule 166.3 has been violated will be on whether such review occurred and, if it did, whether it was 'diligent'"). Whether a registrant has met its supervisory duties is a fact-intensive determination. *See, e.g., GNP Commodities*, 1992 WL 201158, at *17.

K&K, Kooima, and Kaemingk failed in their supervision obligations under either standard. First, K&K's supervisory system was inadequate. K&K did not require customers to sign powers of attorney before APs managed Investment Accounts; or, alternately K&K did not require APs to obtain specific authorization from customers for particular trades. Second, K&K failed to perform its supervisory duties diligently. Even though Kooima and Kaemingk, registered APs with supervisory duties, were aware of Employee 1's escalating levels of unauthorized trading, they did not stop Employee 1's misconduct. In at least one call to K&K's trading desk, Kaemingk described Employee 1's trading as churning and hoped that the customer did not "start[] looking at his accounts." Kooima also expressed concern, in a separate call to K&K's trading desk, that K&K would "catch an audit" and that "they pick one of those [account] numbers that [Employee 1] is trading like crazy." K&K was more concerned with avoiding inquiry into its operations than with adequately disciplining Employee 1. In one telephone call to a friend, Kooima stated, that even if he fired Employee 1, "then what? [He

o]pens up across the street, literally, you know I suppose a guy could threaten him with sanctions, or something, or you know, or we'll turn you in, but hell, you turn him in, you turn me in." Accordingly, Respondents K&K, Kooima, and Kaemingk each violated Regulation 166.3 for their roles in the supervision failures at K&K.

E. K&K Is Liable for Employee 1's, Kaemingk's, and Kooima's Violations of the Act and Regulations.

The foregoing acts, omissions, and failures of Kaemingk, Kooima, and Employee 1 occurred within the scope of their employment, office, or agency with K&K; therefore, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2018), K&K is liable for Kaemingk's acts, omissions, and failures in violation of Sections 4b, 4c(b), and 9(a)(4) of the Act and Regulations 33.10, 166.2, and 166.3, Kooima's acts, omissions, and failures in violation of Regulation 166.3, and Employee 1's acts, omissions, and failures in violation of Sections 4a(e) and 4b of the Act and Regulation 166.2.

F. Respondents Kaemingk and Kooima Are Liable as Control Persons for Respondent K&K's Violations.

Respondents Kooima and Kaemingk controlled K&K, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, K&K's act or acts in violation of the Act and Regulations; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Kaemingk and Kooima are liable for K&K's violations of Sections 4a(e), 4b, 4c(b), and 9(a)(4) of the Act and Regulations 33.10, 166.2, and 166.3.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent K&K violated Sections 4a(e), 4b(a)(1), 4c(b), and 9(a)(4) of the Act, 7 U.S.C. §§ 6a(e), 6b(a)(1), 6c(b), 13(a)(4) (2012), and Regulations 33.10, 166.2, and 166.3, 17 C.F.R. §§ 33.10, 166.2, 166.3 (2018); that Respondent Kaemingk violated Sections 4b(a)(1), 4c(b), and 9(a)(4) of the Act and Regulations 33.10, 166.2, and 166.3; that Respondent Kooima violated Regulation 166.3; and that Respondents Kaemingk and Kooima are liable for Respondent K&K's violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

V. OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge service of this Order;
- B. Admit 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. Waive:

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 they 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 they 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. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondent K&K violated Sections 4a(e), 4b(a)(1), 4c(b), and 9(a)(4) of the Act, 7 U.S.C. §§ 6a(e), 6b(a)(1), 6c(b), 13(a)(4) (2012), and Regulations 33.10, 166.2, and 166.3, 17 C.F.R. §§ 33.10, 166.2, 166.3 (2018); that Respondent Kaemingk violated Sections 4b(a)(1), 4c(b), and 9(a)(4) of the Act and Regulations 33.10, 166.2, and 166.3; that Respondent Kooima violated Regulation 166.3; and that Respondents Kaemingk and Kooima are liable for Respondent K&K's violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012);
 2. Orders Respondents to cease and desist from violating Sections 4a(e), 4b(a)(1), 4c(b), and 9(a)(4) of the Act and Regulations 33.10, 166.2, and 166.3;
 3. Orders Respondents to pay, jointly and severally, restitution in the amount of eleven million, nine hundred twenty thousand, eight hundred fifty-seven dollars

and five cents (\$11,920,857.05) (“Restitution Obligation”) within ten days of the date of entry of this Order;³

4. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of one million, two hundred fifty thousand dollars (\$1,250,000) within ten days of the date of the entry of the Order;
5. Appoints the National Futures Association (“NFA”) as Monitor in this matter;
6. Orders that Respondent Kaemingk be 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)), for a period of fifteen months after the date of entry of this Order, and all registered entities shall refuse him trading privileges during that period; and that Respondent Kooima be 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), for a period of four months after the date of entry of this Order, and all registered entities shall refuse him trading privileges during that period; and
7. Orders Respondent K&K 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. Respondents Kaemingk, Kooima, and K&K, and its successors and assigns, shall cease and desist from violating Sections 4a(e), 4b(a)(1), 4c(b), and 9(a)(4) of the Act, 7 U.S.C. §§ 6a(e), 6b(a)(1), 6c(b), 13(a)(4) (2012), and Regulations 33.10, 166.2, and 166.3, 17 C.F.R. §§ 33.10, 166.2, 166.3 (2018).
- B. Respondents shall pay, jointly and severally, the Restitution Obligation in the amount of eleven million, nine hundred twenty thousand, eight hundred fifty-seven dollars and five cents (\$11,920,857.05) within ten days of the date of the entry of this Order.⁴ If the Restitution Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the unpaid Restitution 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).

³ In its offer, Respondents represented that they already paid \$3,220,857.05 directly to customers in partial satisfaction of the Restitution Obligation, as required under this Order.

⁴ As noted above, in its offer, Respondents represented that they already paid \$3,220,857.05 directly to customers in partial satisfaction of the Restitution Obligation, as required under this Order. Further, Respondents provided the Commission evidence of these payments to customers. In light of this, Respondents owe eight million, seven hundred thousand dollars (\$8,700,000) on their Restitution Obligation as of the date of entry of this Order.

To effect payment by Respondents and the distribution of restitution to Respondents' customers, the Commission appoints the NFA as "Monitor." The Monitor shall receive payments of the Restitution Obligation and any post-judgment interest from Respondents and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, it shall not be liable for any action or inaction arising from its appointment as Monitor other than actions involving fraud.

Respondents shall make their payments of the Restitution Obligation and any post-judgment interest under this Order in the name of the "Kooima & Kaemingk Settlement Fund" and shall send such payments by electronic funds transfer, or U.S. postal money order, certified check, bank cashier's check, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under 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, and to Charles Marvine, Commodity Futures Trading Commission, 4900 Main Street, Suite 500, Kansas City, MO 64112.

The Monitor shall oversee Respondents' Restitution Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to the Respondents' customers or may defer distribution until such time as the Monitor may deem appropriate. In the event that the amount of payments of the Restitution Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission, as discussed below. To the extent any funds accrue to the U.S. Treasury for satisfaction of Respondents' Restitution Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Order.

- C. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of one million two hundred fifty thousand (\$1,250,000) ("CMP Obligation"), within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten 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.

Respondents 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
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
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, Respondents shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents 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, and to Charles Marvine, Commodity Futures Trading Commission, 4900 Main Street, Suite 500, Kansas City, MO 64112.

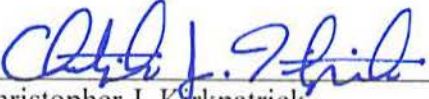
- D. Respondent Kaemingk is prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012)), for a period of fifteen months after the date of entry of this Order, and all registered entities shall refuse him trading privileges during that period; and Respondent Kooima is 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), for a period of four months after the date of entry of this Order, and all registered entities shall refuse him trading privileges during that period.
- E. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondents Kaemingk and Kooima agree that neither they nor any of their agents or employees under their authority or control, and Respondent K&K 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 Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents Kaemingk and Kooima, and Respondent K&K and its successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
 2. Respondent Kaemingk agrees that he shall never, directly or indirectly:

- a. 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 (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2018));
 - b. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;
 - c. apply for registration or claim exemption from registration with the Commission in any capacity, and engaging 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) (2018); or
 - d. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2018)), 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).
3. Cooperation with Monitor: Respondents shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondents' customers, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments. Respondents shall execute any documents necessary to release funds that they have in any repository, bank, investment or other financial institution, wherever located, in order to make partial or total payment toward the Restitution Obligation.
- F. Other Cooperation: Respondents 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. Respondents shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action.
- G. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission or the Monitor of any partial payment of Respondents' Restitution Obligation, or 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.

- H. Change of Address/Phone: Until such time as Respondents satisfy in full their Restitution Obligation and CMP Obligation as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten 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 26, 2018