

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

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**In the Matter of:** )

**Victory Asset, Inc.,** )

**CFTC Docket No.: 18-36**

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

**I.**

**INTRODUCTION**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Victory Asset Inc. (“Victory” or “Respondent”), by and through the acts of one of its former traders, has violated Sections 4c(a)(5)(C) and 6(c)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 6c(a)(5)(C), 9(1) (2012), and CFTC Regulation (“Regulation”) 180.1(a)(1), 17 C.F.R. § 180.1(a)(1) (2018). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Victory 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, Victory consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.<sup>1</sup>

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<sup>1</sup> Respondent consents to the use of the findings and conclusions 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, other than a proceeding in bankruptcy or receivership or a proceeding to enforce the terms of this Order. Respondent does not consent to the

## II. FINDINGS

The Commission finds the following:

### A. SUMMARY

From at least May 2013 to July 2014 (“Relevant Period”), Victory by and through one of its former traders, Michael Dennis Franko (“Franko”), engaged in the disruptive trading practice of “spoofing” (bidding or offering with the intent to cancel the bid or offer before execution) with respect to copper and gold futures contracts offered on the Commodity Exchange (“COMEX”) and light sweet crude oil futures offered on the New York Mercantile Exchange (“NYMEX”). This conduct violated Sections 4c(a)(5)(C) and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(a)(5)(C), 9(1) (2012), and Regulation 180.1(a)(1), 17 C.F.R. § 180.1(a)(1) (2018). In addition, during the Relevant Period, Franko engaged in a manipulative scheme, in violation of Section 6(c)(1) of the Act and Regulation 180.1(a)(1).

### B. RESPONDENT

Victory is the successor entity of Union Spring Asset Management, Inc. and Willowbridge Asset Management, Inc. (“WAMI”). Franko worked as a trader for Victory or one of its predecessor entities from 1999 until 2016. Victory is registered as a Commodity Pool Operator and a Commodity Trading Advisor.

### C. FACTS

During the Relevant Period, Franko was employed by WAMI, one of Respondent’s predecessor entities. As part of his duties at WAMI, Franko placed orders and entered into transactions for futures contracts in the Relevant Markets. During the Relevant Period, frequently, on an almost daily basis, Franko placed bids or offers for futures contracts in COMEX copper, COMEX gold, and NYMEX crude oil contract markets with the intent to cancel those orders before their execution. Typically, Franko placed a relatively small order with the intent to execute that order (“Genuine Order”) and, prior to the full execution of the Genuine Order, he placed a larger order (“Spoof Order”) on the opposite side of the same or a correlated market with the intent to cancel that order before it was executed. Generally, Franko would place Genuine Orders that were iceberg orders, so that they displayed to the market a smaller quantity than the entire order. Franko’s Spoof Orders were, by contrast, fully visible to the market.

Franko’s misconduct involved both domestic and international markets. With respect to the purely domestic conduct on COMEX and NYMEX, Franko placed Genuine Orders and Spoof Orders in COMEX copper, COMEX gold, or NYMEX crude oil futures contracts. In each product market, Franko entered and cancelled Spoof Orders to affect market activity and benefit

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use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

his Genuine Orders in that same product market. With respect to Franko's cross-market conduct on COMEX and LME, Franko sought to take advantage of the general correlation, particularly in the short term, between prices of COMEX copper and LME copper futures contracts. Traders' awareness of this correlation allowed Franko to play one copper futures market off the other. Specifically, Franko entered and cancelled Spoof Orders in the COMEX copper futures market to affect Genuine Orders in the LME copper futures market, and he entered and cancelled Spoof Orders in the LME copper futures market to affect Genuine Orders in the COMEX copper futures market. While the purpose of Franko's scheme, whether intra-market or cross-market, was to get his Genuine Orders filled (regardless of the location of the Genuine Orders), Franko's Spoof Orders, whether placed domestically or internationally, affected domestic market activity.

Franko's Spoof Orders were designed to create or exacerbate order book imbalance in the Relevant Markets, for the benefit of his Genuine Orders. It worked generally as set forth in this example from December 17, 2013:

- Franko had not traded copper futures contracts for approximately two hours when he placed two Genuine Orders to sell COMEX copper futures contracts, each eleven lots, one at the best offer ("First Genuine Order") and the other at the second best offer ("Second Genuine Order"). Both Genuine Orders were iceberg orders that only showed to the market as one lot.
- Franko then placed a Spoof Order to buy LME copper futures contracts, a 100 lot bid, fully visible to the market, at the second best bid. Before he placed the Spoof Order, there were two contracts resting on LME at the first and second best bid (one at each level); thus, the Spoof Order increased the number/percentage of these contracts at these levels by fifty times.
- While the Spoof Order was on the market, Franko's First Genuine Order for COMEX copper futures contracts was fully filled, and four lots of the Second Genuine Order were filled.
- Franko canceled his Spoof Order on LME approximately one second after he placed it; his Spoof Order was never at the best bid, and in fact, it was worse than the fifth best bid when he canceled it.
- Franko then placed a second Spoof Order, another 100 lot bid for LME copper futures contracts that was at a higher price than his previous Spoof Order, but, because of market movement, it was placed at the third best bid. Before he placed the second Spoof Order, four contracts were resting on LME at the first through third best bid; thus, the Spoof Order increased the contracts at these levels by twenty-five times.
- Franko's second Spoof Order was also fully visible to the market and while it was on the market, five more lots on Franko's Second Genuine Order were filled.
- Franko canceled his second Spoof Order on LME approximately one second after he placed it; his Spoof Order was never at the best bid, and in fact, it was at the fifth best bid when he canceled it.
- Franko's remaining two lots were filled by the market over the next several seconds, and thereafter, Franko ceased trading for thirty minutes.

During the Relevant Period, the account in which the above-listed orders were placed was owned by WAMI, a predecessor entity of Victory.

### III.

#### LEGAL DISCUSSION

##### A. **Spoofing in COMEX Copper, COMEX Gold, and NYMEX Crude Oil Futures Contracts, in Violation of Section 4c(a)(5)(C) of the Act**

Section 4c(a)(5) of the Act, 7 U.S.C. § 6c(a)(5) (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, Victory, by and through the acts of Franko, frequently, on an almost daily basis, entered bids or offers on a registered entity, specifically COMEX or NYMEX, 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., In re Gola*, CFTC No. 17-12, 2017 WL 1230473, at \*1 (Mar. 30, 2017) (consent order) (finding that a manual trader engaged in spoofing by “placing bids or offers of 1,000 lots or more with the intent to cancel those orders before execution” in the U.S. Treasury futures markets).

##### B. **Use of a Manipulative Scheme in COMEX Copper, COMEX Gold, NYMEX Crude Oil, and LME Copper Futures Contracts in Violation of Section 6(c)(1) of the Act and Regulation 180.1(a)(1)**

Under Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a), 17 C.F.R. § 180.1(a) (2018), it is unlawful to, directly or indirectly, in connection with any contract for future delivery on or subject to the rules of a registered entity, intentionally or recklessly “(1) Use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud.”

As described above, Victory, by and through the acts of Franko, employed a manipulative scheme wherein it created or exacerbated the appearance of an order book imbalance in a manner that could and did affect market activity on the domestic exchanges. Franko employed his scheme through Spoof Orders combined with Genuine Orders in domestic markets in COMEX copper, COMEX gold, and NYMEX light sweet crude oil futures markets. Franko also employed his scheme through Spoof Orders combined with Genuine Orders across the LME copper and the COMEX copper futures markets. For both his cross-market activity and his intra-market activity, Franko intended to affect market activity on domestic exchanges. Franko knew or recklessly disregarded that his Spoof Orders would create or exacerbate the appearance of an order book imbalance in a market and result in misinformation, thereby inviting market participants to react to Franko’s spoofing and execute against his Genuine Orders—allowing

Genuine Orders to fill sooner, at a better price, or in larger quantities than they otherwise would. *See, e.g., In re McVean Trading & Invs. LLC*, CFTC No. 17-15, 2017 WL 2729956, at \*11 (June 21, 2017), (noting that defendants had been trading for decades and it was very difficult to believe they were not aware that their conduct had the potential to affect or influence the market). Through this conduct, Victory, by and through the acts of Franko, violated Section 6(c)(1) of the Act and Regulation 180.1(a)(1).

**C. Victory Is Liable for the Acts of Its Agent**

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), provide that “[t]he 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.” Pursuant to Section 2(a)(1)(B) of the Act and Commission Regulation 1.2, strict liability is imposed on principals for the actions of their agents. *See, e.g., Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986); *Dohmen-Ramirez v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988); *CFTC v. Byrnes*, 58 F. Supp. 3d 319, 324 (S.D.N.Y. 2014).

Franko, a former employee of Victory, engaged in the conduct described herein within the course and scope of his employment with a predecessor entity to Victory; therefore, pursuant to Section 2(a)(1)(B) of the Act and Regulation 1.2, Victory is liable for the acts, omissions, and failures of Franko in violation of the provisions of the Act and Commission Regulation cited above.

**IV.**

**FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that Victory violated Sections 4c(a)(5)(C) and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(a)(5)(C), 9(1) (2012), and Commission Regulation 180.1(a), 17 C.F.R. § 180.1(a)(1) (2018).

**V.**

**OFFER OF SETTLEMENT**

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

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

- C. Waives:
1. The filing and service of a complaint and notice of hearing;
  2. A hearing;
  3. All post-hearing procedures;
  4. Judicial review by any court;
  5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
  6. Any and all claims that 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 Commission's 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, §§ 201-53, 110 Stat. 847, 857-74 (codified in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
  8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Victory has consented in the Offer; and
- 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:
    - (i) Victory, by and through the acts of Franko, violated Section 4c(a)(5)(C), 7 U.S.C. § 6c(a)(5)(C) (2012);
    - (ii) Victory, by and through the acts of Franko, violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012) and Regulation 180.1(a)(1), 17 C.F.R. § 180.1(a)(1) (2018);
  2. Orders Victory to cease and desist from violating Sections 4c(a)(5)(C) and 6(c)(1) of the Act, and Regulation 180.1(a)(1);

3. Orders Victory to pay a civil monetary penalty in the amount of one million eight hundred thousand dollars (\$1,800,000), plus post-judgment interest if the civil monetary penalty is not paid in full within ten (10) days of the date of entry of this Order; and
4. Orders Victory 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. Victory and its successors and assigns shall cease and desist from violating Sections 4c(a)(5) and 6(c)(1) of the Act, 7 U.S.C. §§ 6c(a)(5)(C), 9(1) (2012), and Regulation 180.1(a)(1), 17 C.F.R. § 180.1(a)(1) (2018).
- B. Victory shall pay a civil monetary penalty of one million eight hundred thousand dollars (\$1,800,000), within ten (10) days of the entry of this Order (the “CMP Obligation”). If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Victory 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:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivable  
DOT/FAA/MMAC/AMZ-341  
CFTC/CPSC/SEC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
(405) 954-7262 office  
(405) 954-1620 fax  
marie.thorne@faa.gov

If payment is to be made by electronic funds transfer, Victory shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Victory shall accompany payment of the CMP

Obligation with a cover letter that identifies Victory and the name and docket number of this proceeding. Victory 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. Victory shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Victory agrees that neither it nor any of its successors, 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.
- D. Partial Satisfaction: Victory understands and agrees that any acceptance by the Commission of any partial payment of Victory's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
- E. Change of Address: Until such time as Victory satisfies in full its CMP Obligation as set forth in this Consent Order, Victory 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 on this date.**

By the Commission

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

Dated: September 19, 2018