

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

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**In the Matter of:**

**Michael Leibowitz,**

**Respondent.**  
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) **CFTC Docket No.: 18-52**  
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Office of Proceedings  
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**3:19 pm, Sep 28, 2018**

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO  
SECTIONS 6(c) AND 6(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 Michael Leibowitz (“Leibowitz” or “Respondent”) has violated Commission Regulation (“Regulation”) 166.3, 17 C.F.R. § 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 Respondent engaged in the violation set forth herein and to determine whether any order should be issued imposing remedial sanctions.

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

<sup>1</sup> Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

## II. FINDINGS

The Commission finds the following:

### A. SUMMARY

Since 2011, Michael Leibowitz has served as Chairman of the Board of TFS-ICAP, LLC, and TFS-ICAP Ltd. (together, “TFS-ICAP”), an interdealer broker of foreign exchange options (“FX Options”) formed as a joint venture between Tradition Financial Services (“Tradition”), ICAP plc, and Volbroker.com, Ltd. As Chairman, Leibowitz had both the ability and responsibility to ensure appropriate oversight of TFS-ICAP employees and to ensure that policies or procedures were in place to prevent fraudulent practices on the broking desks.

From at least 2013 to 2015 (the “Relevant Period”), brokers on the emerging markets desks at TFS-ICAP routinely attempted to deceive—and did deceive—their clients by communicating to them fake bids and offers, a practice known among brokers in the FX options industry as “flying prices” or “flying rates,” and fake trades, a practice known as “printing” or “calling” trades. By flying prices and printing trades, these brokers at TFS-ICAP intended to create an illusion of greater liquidity and tighter spreads on TFS-ICAP’s trading platform and induce clients to transact via TFS-ICAP’s platform and brokers.

Throughout the Relevant Period, senior managers at TFS-ICAP had reason to know that brokers on the emerging markets desks at TFS-ICAP were flying prices and printing trades to customers based in the U.S. and abroad. Nevertheless, Leibowitz failed to implement any policies or procedures to ensure that brokers and senior managers did not engage in this conduct. This failure violated Regulation 166.3.

### B. RESPONDENT

**Michael Leibowitz** has served as the Chairman of the Board of TFS-ICAP, LLC since 2011. Since 2013, Leibowitz has been registered with the CFTC as an Associated Person of TFS-ICAP, LLC and has been listed as a Principal of TFS-ICAP, LLC since 2012.

### C. FACTS

#### *Flying and Printing*

During the Relevant Period, it was common practice for TFS-ICAP brokers on the emerging markets desks in both London and New York to communicate non-bona fide bids and offers to their clients. Specifically, they would represent to clients that there were bids or offers for an option at a particular level when, in fact, no trading institution had bid or offered the option at that level. This practice was referred to in the FX options brokerage industry as “flying” prices.

During the Relevant Period, it was also common practice for TFS-ICAP brokers on the emerging markets desks in both London and New York to communicate fake trades to clients—i.e., communicate that a trade had occurred when a trade had not, in fact, occurred. This practice

was known in the industry as “printing,” “spoofing,” or “calling” a trade. By printing a fake trade, these brokers intended to induce traders to enter into real “follow-on” trades.

In addition, in or about early 2015, TFS-ICAP brokers on the emerging markets desks in New York began flying prices and printing trades in the name of a Commission registered swap dealer without its knowledge or consent.

During the Relevant Period, senior managers at TFS-ICAP were aware of—and in some instances condoned and actively encouraged the practices of—flying and printing. Following TFS-ICAP’s registration with the Commission as an Introducing Broker in 2013, senior managers continued to be aware of the practices of flying and printing on the emerging markets desks.

#### *Leibowitz’s Supervisory Role and Failure to Supervise*

As Chairman, Leibowitz had supervisory responsibilities for TFS-ICAP. He also was a registered associated person and listed principal of TFS-ICAP. At no point during the Relevant Period did Leibowitz, individually or together with the senior managers of TFS-ICAP, impose a policy prohibiting flying prices or printing trades. Leibowitz, individually or together with the senior managers of TFS-ICAP, could have developed and caused the implementation of policies and procedures that prohibited and deterred flying prices and printing trades. Leibowitz failed to diligently supervise the handling of FX Options Trades by TFS-ICAP brokers and senior managers on the emerging markets desks.

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In accepting Leibowitz’s Offer, the Commission recognizes Leibowitz’s cooperation with the Commission’s Division of Enforcement.

### **III. LEGAL DISCUSSION**

Regulation 166.3, 17 C.F.R. § 166.3 (2018), requires each CFTC registrant, except an associated person who has no supervisory duties, to diligently supervise the handling of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents relating to its business as a Commission registrant. The term “registrant” applies not only to entities and individuals who are actually registered, but to any entity or individual who is required to be registered under the Act or Regulations. *See* Rule 166.1, 17 C.F.R. § 166.1 (2018). A violation of Regulation 166.3 is demonstrated by showing either that the registrant’s supervisory system was generally inadequate, or that the registrant failed to perform its supervisory duties diligently. *In re Murlas Commodities*, CFTC No. 85-29, 1995 WL 523563, at \*9 (Sept. 1, 1995); *In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at \*19 (Aug. 11, 1992) (providing that, even if an adequate supervisory system is in place, Regulation 166.3 can be violated if the supervisory system is not diligently administered).

Under Commission Regulation 166.3, a registrant has a “duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents.” *Samson Refining Co. v.*

*Drexel Burnham Lambert, Inc.*, CFTC No. 82-R448, 1990 WL 282783, at \*11 (Feb. 16, 1990) (quoting *Lobb v. J.T. McKerr & Co.*, CFTC No. 85-R185, 1986 WL 65526 (Dec. 14, 1989)). Thus, “a showing that the registrant lacks an adequate supervisory system [standing alone] can be sufficient” to establish a breach of duty under Regulation 166.3. *In re Collins*, CFTC No. 94-13, 1997 WL 761927, at \*10 (Dec. 10, 1997). Indeed, once supervisor status is established, the Commission need only show that the defendant lacked diligence in his oversight of his employees and agents in order to succeed on a Regulation 166.3 claim. *See Monieson v. CFTC*, 996 F.2d 852, 862 (7th Cir. 1993). A violation under Commission Regulation 166.3 is an independent violation for which no underlying violation is necessary. *In re Collins*, 1997 WL 761927 at \*10.

Leibowitz was a registered associated person and had supervisory responsibilities over brokerage practices at TFS-ICAP. Neither Leibowitz, nor anyone associated with TFS-ICAP, developed “procedures for the detection and deterrence of possible wrongdoing.” *Samson*, 1990 WL 282783, at \*11. Indeed, there was no TFS-ICAP policy or procedure that explicitly prohibited flying or printing or otherwise addressed providing false market information to clients. Accordingly, Leibowitz is liable for violating Regulation 166.3.

#### **IV. FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that Leibowitz violated Regulation 166.3, 17 C.F.R. § 166.3 (2018).

#### **V. OFFER OF SETTLEMENT**

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

- A. Acknowledges service of this Order;
- B. Admits the jurisdiction of the Commission to all the matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on a violation of or enforcement of this Order;
- C. Waives:
  - (1) The filing and service of a complaint and notice of hearing;
  - (2) A hearing;
  - (3) All post-hearing procedures;
  - (4) Judicial review by any court;
  - (5) Any and all objections to the participation by any member of the Commission’s staff in the Commission’s consideration of the Offer;
  - (6) Any and all claims that he may possess under the Equal Access to Justice Act,

5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this proceeding;

- (7) Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 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 upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; 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 Respondent violated Regulation 166.3, 17 C.F.R. § 166.3 (2018);
  - (2) orders Respondent to cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2018);
  - (3) orders Respondent to pay a civil monetary penalty in the amount of two-hundred and fifty thousand dollars (\$250,000), plus post-judgment interest within ten days of the date of the entry of this Order; and
  - (4) orders Respondent to comply with the conditions and undertakings consented to in the Offer and set forth in Part VI of this Order.

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

## **VI. ORDER**

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

- A. Respondent shall cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2018).
- B. Respondent shall pay a civil monetary penalty in the amount of two-hundred and fifty thousand dollars (\$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 (2012).

Respondent 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, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither he nor any agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order, or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.
  2. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, this action. As part of such cooperation, Respondent agrees to:
    - a. preserve and produce to the Commission in a responsive and prompt manner, as requested by the Division's staff, all non-privileged documents, information, and other materials wherever located, in the possession, custody, or control of Respondent;
    - b. utilize his knowledge and skill to explain transactions, interpret information

and terminology or identify new and productive lines of inquiry;

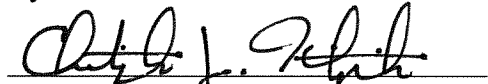
- c. prepare and appear for interviews and testimony at such times and places as requested by the Division's staff;
- d. respond completely and truthfully to all inquiries and interviews, when requested to do so by the Division's staff;
- e. identify and authenticate relevant documents, execute affidavits or declarations, and testify completely and truthfully at depositions, trial, and other judicial proceedings, when requested to do so by the Division's staff;
- f. accept service by mail, electronic mail, or facsimile transmission of notices or subpoenas for documents and/or testimony at depositions, hearings, or trials;
- g. appoint Respondent's attorney as agent to receive service of such notices and subpoenas;
- h. waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules in connection with requests or subpoenas of the Division's staff; and
- i. serve by hand delivery or by next-day mail all written notices and correspondence required by or related to this Agreement to the Director of the Division of Enforcement, United States Commodity Futures Trading Commission, 1155 21st Street, NW, Three Lafayette Centre, Washington, DC 20581, unless otherwise directed in writing by the Division's staff.

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

E. Change of Address/Phone: Until such time as Respondent satisfies in full his cooperation obligations as set forth in the Consent Order and the Cooperation Agreement, Respondent shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

**The provisions of this Order shall be effective on this date.**

By the Commission



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

Dated: September 28, 2018