

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of : CFTC Docket No. 02-09
: :
JOSEPH DEFRANCESCO, MARC GREENSTEIN, : :
RONALD KILBRIDE, and BRIAN THORNTON : :
: :
Respondents. : :
: :
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ORDER MAKING FINDINGS AND IMPOSING SANCTIONS
AS TO RESPONDENT RONALD KILBRIDE

I.

On March 20, 2002 the Commodity Futures Trading Commission ("Commission") filed a Complaint and Notice of Hearing ("Complaint") against Ronald Kilbride. The Complaint charges that Kilbride violated Sections 4b(a)(i), (iii) and (iv), 4c(a)(1), and 4g of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 6b(a)(i), (iii) and (iv), 6c(a)(1) and 6g (1994), and Sections 1.35(d) and 1.38 of the Commission's regulations promulgated thereunder (the "Regulations"), 17 C.F.R. §§ 1.35(d) and 1.38 (2001) and aided and abetted violations of Section 4c(a)(1) of the Act.

II.

In order to dispose of the allegations and issues raised in the Complaint as to him, Kilbride has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the allegations of the Complaint or the findings herein, Kilbride acknowledges service of this Order Making Findings and Imposing Remedial Sanctions ("Order"). Kilbride consents to the use of the findings contained in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Kilbride does not consent to the use of his Offer or the findings in this Order, or consented to in his Offer, as the sole basis for any other proceeding brought by the Commission, other than a proceeding brought to enforce the terms of this Order. Kilbride also does not consent to the use of his Offer or the findings in the Order by any other person or entity in this or in any other proceeding. The findings made in the Order are not binding on any other person or entity named as a defendant or respondent in this or any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

From February 8, 2000 through November 17, 2000, Kilbride fraudulently executed trades in the coffee futures ring of the Coffee, Sugar & Cocoa Exchange, (“CSCE”), a Division of the New York Board of Trade (“NYBOT”), by trading ahead of executable customer orders and allocating trades to his personal account at better prices than those received by his customers in violation of 4b(a)(i) and (iii) of the Act. Kilbride also fraudulently executed customer orders in the coffee futures ring on the CSCE by trading for his own account indirectly opposite his customer orders, and thus engaged in fraud and deception in violation of Sections 4b(a)(i) and (iii) of the Act, indirect bucketing in violation of Section 4b(a)(iv) of the Act, trading at non bona fide prices in violation of Section 4c(a)(1) of the Act, and noncompetitive trading in violation of Section 1.38 of the Regulations. In addition, in accommodating indirectly bucketed trades, Kilbride entered into wash sales to accommodate such trades, in violation of Section 4c(a)(1) of the Act, which prohibits wash sales and accommodation trades. Kilbride also failed to record required trading information on trading cards in violation of the recordkeeping requirements of Section 4g of the Act and Section 1.35(d) of the Regulations.

B. SETTLING RESPONDENT

RONALD KILBRIDE, who resides at 320 Sinclair Court, Morganville, New Jersey 07751, is now, and was at all times relevant to this matter, registered with the Commission as a floor broker pursuant to Sections 4e and 4f of the Act, as amended, 7 U.S.C. §§ 6e and 6f (1994), and a member of the Coffee, Sugar & Cocoa Exchange, Inc. At all times relevant to this matter, Kilbride was the sole principal of RFK Inc. (“RFK”), a floor brokerage firm on the CSCE.

C. FACTS

During the time period from February 8, 2000 through November 17, 2000, Kilbride executed orders for RFK customers and traded for his personal account in coffee futures on the CSCE.

1. Trading Ahead of Executable Customer Orders

From February 8, 2000 through November 17, 2000, Kilbride knowingly or recklessly traded coffee futures for his personal account while holding executable customer orders on the same side of the market. These trades for his personal account were at better prices than the trades that filled the executable customer orders. Kilbride engaged in trading ahead of his executable customer orders in a total of six instances.

2. Allocation

In two instances where Kilbride traded ahead, he also allocated a trade to his personal account at a better price than that received by the customer. The evidence shows that Kilbride originally filled the customer order, then crossed out the original indicator that the trade was a customer trade, and allocated the trade to his personal account. The customer order was then filled on the next line at a price that was worse than the price received by Kilbride.

3. Indirect Bucketing

From February 8, 2000 through November 17, 2000, Kilbride indirectly bucketed his customer orders by noncompetitively trading for himself and for customers so that, aided by an accommodating trader, he ended up with a position for his own account opposite a position for his customer.

Kilbride noncompetitively executed customer orders for coffee futures to engage in indirect bucketing on seven occasions. In each case, Kilbride bought and sold noncompetitively in the same contract month at or about the same price and time opposite another trader (the "Accommodator") trading for his own account. Kilbride traded to fill a customer order on one of the trades and traded for his own account on the other trade. Routinely, the Accommodator executed both sides for his own account and broke even or made a small profit. Kilbride ended up with a position opposite his customer order. As a result of the actions of Kilbride, his customers were deprived of competitive executions of their orders.

4. Wash Sales and Accommodation Trades

Kilbride also accommodated another trader to indirectly bucket his customer order on one occasion. In so doing, Kilbride engaged in wash sales and accommodation trades. Kilbride engaged in wash sales and accommodation trades by simultaneously or nearly simultaneously purchasing and selling for his own account the same future noncompetitively to assist a broker in taking the opposite side of his customer order.

5. Recordkeeping Violations

Members of contract markets are required by the Act and the Regulations to prepare and retain certain records. In particular, Section 1.35(d) of the Regulations requires that members prepare a trading card or other record detailing the trades executed by them. This Regulation specifies that members record trades sequentially, without skipping lines, and that the trading cards be properly identified and numbered.

The date, hour and/or minute of the transaction was omitted on numerous cards trading cards for Kilbride.

D. LEGAL DISCUSSION

1. CHEATING, DEFRAUDING AND DECEIVING CUSTOMERS

Kilbride cheated or defrauded, or attempted to cheat or defraud, or willfully deceived, or attempted to deceive, customers in connection with the execution of his customer orders by trading ahead of executable customer orders and allocating trades to his personal account to his customers' detriment. In addition, Kilbride cheated, defrauded, and deceived his customers by indirectly bucketing his customers' orders.

Executing floor brokers are subject to the anti-fraud provisions of Section 4b of the Act.² Fraud under the Act requires a showing of scienter.³ Scienter is established when a respondent commits a wrongful act intentionally or with reckless disregard.⁴ A reckless act is one where there is so little care that it is "very difficult to believe the [actor] was not aware of what he was doing."⁵ Scienter cannot be avoided by ignorance brought about by willfully or recklessly ignoring the truth.⁶

Kilbride defrauded and deceived his customers by trading for his own account while holding executable customer orders. In so doing, he unlawfully "traded ahead" of his customers' orders in violation of Sections 4b(a)(i) and 4b(a)(iii) of the Act. In *United States v. Dial*, 757 F.2d 163, 167-70 (7th Cir. 1985), the Court held that "trading ahead" of customer orders constitutes fraud. The Court of Appeals decision in *Dial* involved a criminal conviction for mail fraud and did not involve the actions of a floor broker. However, a CFTC administrative action charged that the same conduct violated Section 4b(a) of the Act. Based on the criminal conviction, the account executive respondents in the administrative action were found to have violated Section 4b(a) for trading ahead of their customer orders.⁷

Kilbride also allocated favorable trades to his personal account while filling customer orders at unfavorable prices in violation of Section 4b(a)(i) and 4b(a)(iii). The Commission has held that "Section 4b of the Act prohibits . . . allocation of winning and losing trades."⁸

² *In re Murphy*, [1984-86 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,798 at 31,151 (CFTC Sept. 25, 1985).

³ *In re Staryk*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,206, at 45,810 (CFTC Dec. 18, 1997). See also *Reddy v. CFTC*, 191 F.3d 109, 119 (2d Cir. 1999).

⁴ *Hammond v. Smith Barney, Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 (CFTC Mar. 1, 1990).

⁵ *Do v. Lind-Waldock & Co.*, [2000-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,516, at 43,321 (CFTC Sept. 27, 1995); *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748-49 (D.C. Cir. 1988).

⁶ See *Hammond v. Smith Barney*, [1987-90 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 (CFTC Mar. 1, 1990); see also *Do v. Lind-Waldock & Co.*, ¶ 26,516, at 43,321 (an employee acted recklessly by failing to ascertain the status of an order prior to advising the customer that it was too late to cancel).

⁷ *In re Dial*, [1986-87] Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,772 at 34,024 (CFTC ALJ 1987).

⁸ *In re GNP Commodities Inc.*, [1990 – 1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,214 (CFTC Aug. 11, 1992) citing *In re Lincolnwood Commodities, Inc.*, [1982 – 1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,986 at 28,246 (CFTC Jan. 31, 1984); see also *In re Shahrokh Nikkhah*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,129 at 49,885 (CFTC May 12, 2000) ("a post-execution allocation process could

Kilbride also cheated, defrauded, and deceived his customers by indirectly taking the opposite side of his customer orders through noncompetitive trades. Noncompetitive executions of customer orders constitute cheating and defrauding of customers.⁹ The prices these customers received were not the result of arms length trading. As illustrated above, the customers were deprived of the competitive process, and may have purchased at higher prices or sold at lower prices as a result of the Kilbride's misconduct.

The Seventh Circuit reached a similar conclusion in upholding mail and wire fraud convictions in a Chicago Board of Trade soybean traders case. The court observed that “by picking customer prices and opposing traders, the defendants removed their customers from the pit’s competitive marketplace and forced the customers to accept the results they selected . . . denying the customer the opportunity to obtain a better price.” *United States v. Ashman*, 979 F.2d 469, 477 (7th Cir. 1992). It further stated that “even though customers may not be entitled to any specific price, deliberate refusal to pursue the best price the broker can obtain can constitute a scheme to defraud.” *Id.* at 478.

Analysis of trading patterns may be the basis for establishing noncompetitive trading.¹⁰ The Commission has found that “a pattern marked by characteristics unlikely to occur in an open and competitive market [is] indicative of noncompetitive trading.” *Rouso*, ¶ 27,133, at 45,308. Where such a pattern exists, a court may infer that the trades that form the pattern were intentionally achieved by noncompetitive means.¹¹

However, the Division must show that “it is more likely than not that the respondents engaged in noncompetitive trading.” *Rouso*, ¶ 27,133, at 45,308. In *Rouso*, the Division presented evidence of 143 noncompetitive trades involving four respondents over a six month period. The Division’s expert identified repeated instances fitting the indirect bucketing pattern occurring on approximately 40% of the trading days examined. Accordingly, the Commission upheld the ALJ’s finding that the *Rouso* respondents knowingly participated in noncompetitive trading in violation of section 4b(a)(i).

Kilbride had a duty to his clients to execute their orders in a manner where he would not personally profit at their expense. His reckless disregard of his obligations to his customers in both trading ahead of customer orders and trading opposite customer orders constitutes fraud.

only be deemed predetermined and fair for purposes of Section 4b(a) if it resulted in an equal division of the contracts among the eligible pool of customers”).

⁹ *In re Murphy*, [1984-86 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,798 at 31,151 (CFTC Sept. 25, 1985); *In re Julian Marks*, 22 A.D. 761, 773 (1964) (customers “entitled to have the orders executed on their merits.”).

¹⁰ *In the matter of Rouso*, [1996-98 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,133, at 45,308 (CFTC Jul. 29, 1997); *In the matter of Buckwalter*, [1990-92 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,995, at 37,684 (CFTC Jan. 25, 1991); *In the matter of Rosenberg*, [1990-92 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,992, at 37,643 (CFTC Jan. 25, 1991).

¹¹ *Rouso*, ¶ 27,133, at 45,308; *See In re Collins*, [1986-87 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,982 at 31,900 n. 16 (CFTC Apr. 4, 1986).

2. BUCKETING CUSTOMER ORDERS

Kilbride engaged in bucketing customer orders in violation of Section 4b(a)(iv) of the Act. Bucketing customer orders consists of the broker directly or indirectly “trading opposite the order for the broker’s own account.” *In re Reddy*, 191 F.3d 109, 115 (2nd Cir. 1999). A transaction can be a bucket even if the orders are executed on the exchange floor as long as the order is not submitted for competitive bidding.¹² A bucket may be accomplished indirectly by using an accommodation trade whereby the accommodating trader trades opposite the broker trading for a customer and then trades opposite the broker trading for his own account. In this way, the broker indirectly takes the opposite side of the customer’s order and the accommodating trader ends up without an open position.¹³ Accordingly, the broker trades opposite his own customer while appearing to trade opposite the accommodator.¹⁴

3. ENTERING INTO WASH SALES OR ACCOMMODATION TRADES

Kilbride violated the prohibition in Section 4c(a)(1) against wash sales and accommodation trades. Wash sales are trades undertaken for the purpose of giving the appearance that trades have been executed without positions actually being taken in the market, or without any actual change in the account holder’s market position. In *Bear Stearns*, ¶ 24,994 at 37,663, the Commission explained:

In a wash sale, for example, a trader gives the appearance of making independent decisions to buy and then sell (or sell and then buy) one or more futures contracts. His actual intention at the time he initiates the transaction, however, is to both buy and sell the contract at the same or a similar price – in other words, to create a financial and position nullity extraneous to the price discovery and risk shifting functions of the futures market.

Kilbride’s round-turn, accommodation trading for his own account are classic wash sales. In these trades, he had no position in the market. Accommodation trading consists of noncompetitive trades entered into by one trader to facilitate another trader in making trades prohibited by the Act or Regulations.¹⁵

In addition, by using an accommodating trader to indirectly bucket his own customers’ orders, Kilbride aided and abetted other traders wash trades in violation of Section 4c(a)(1).

¹² *In re The Siegel Trading Company, Inc.*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,452 at 21,841 (ALJ July 26, 1977), *vacated on other grounds*, ¶ 20,637 (CFTC June 21, 1978).

¹³ *Id.*

¹⁴ *Reddy*, 191 F.3d at 115.

¹⁵ See *In re Reddy*, 191 F.3d 109, 115 (2nd Cir. 1999); *Sundheimer v. Commodity Futures Trading Commission*, 688 F.2d 150, 152 (2d Cir. 1982), *cert. denied*, 460 U.S. 1022 (1983); *In re Eisen*, 22 A.D. 758 (1963).

4. NONCOMPETITIVE TRADING

By failing to execute his trades openly and competitively, Kilbride violated Section 1.38 of the Regulations. Noncompetitive trades are generally transacted in accordance with expressed or implied agreements or understandings between the traders and include illegal price changes. Trades can be noncompetitive even though they were executed in the pit.¹⁶ “The Commission has found that in appropriate circumstances a pattern marked by characteristics unlikely to occur in an open and competitive market [is] indicative of noncompetitive trading.” *Rouso* at 45,308. The indirect bucketing configuration permits the inference that the pattern of trades with that configuration was achieved by intentionally noncompetitive means. *Id.* In addition to the pattern of indirect buckets, the evidence that trades were executed noncompetitively includes audit trail irregularities, including alteration of records and insertion of trades. In addition, for each of the trades Kilbride made money as the executing broker or either made money or broke even on the trade as the accommodator. By indirectly bucketing his customer orders, and accommodating other brokers to do so, Kilbride engaged in noncompetitive trading in violation of Section 1.38 of the Regulations.

5. NON BONA FIDE PRICES

Kilbride violated Section 4c(a)(1) of the Act, which makes it unlawful to confirm the execution of any commodity futures transaction "if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price."¹⁷ Bona fide prices are only those prices that result from competitive trading. Kilbride executed trades noncompetitively, and, thus, the prices that were reported on his trading cards, to his customers and to CSCE were not bona fide.¹⁸ Such trades are not “bona fide” for purposes of Section 4b(a)(1), even if they accurately reflect the current price prevailing in the pit.¹⁹ Accordingly, Kilbride violated Section 4c(a)(1) of the Act.

6. RECORDKEEPING VIOLATIONS

Section 4g of the Act and Section 1.35(d) of the Regulations are violated by members of a contract market who fail to record required information on their trading cards or similar records. Section 1.35(d) of the Regulations specifies that members of contract markets prepare trading cards or similar records documenting their trades and requires, among other things, that for each transaction executed by the member, the trading card or other record state the date, hour

¹⁶ *In re Buckwalter*, ¶ 24,995 at 37,683 (citing *Laiken v. Dep't of Agriculture*, 345 F.2d 784, 785 (2d Cir. 1965)).

¹⁷ *In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,653 (CFTC Jan. 25, 1991).

¹⁸ *See In re Gilchrist*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,653 (CFTC January 25, 1991).

¹⁹ *Id.* at n.25; *see also United States v. Winograd*, 656 F.2d 279, 283 (7th Cir. 1981); *CFTC v. Savage*, 611 F.2d 270, 284 (9th Cir. 1979); *In re Goldwurm*, 7 A.D. 265 at 275-276 (1948).

and minute of the transaction. Kilbride routinely failed to record this trade information in violation of Section 1.35(d) of the Regulations.

IV.

OFFER OF SETTLEMENT

Kilbride has submitted an Offer in which he, without admitting or denying the findings herein: (1) acknowledges service of the Complaint and the Order; (2) admits the jurisdiction of the Commission with respect to the matters set forth herein; (3) waives a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63 (1996), and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, et seq. (2001), relating to or arising from this action, and any claim of Double Jeopardy based upon institution of this proceeding or the entry of any order imposing a civil monetary penalty or any other relief; (4) stipulates that the record basis on which the Order may be entered shall consist solely of the Complaint, Order and findings in the Order consented to in the Offer; and (5) consents to the Commission's issuance of the Order, which makes findings as set forth below and: (a) orders Kilbride to cease and desist from violating the provisions of the Act and Regulations that he has been found to have violated; (b) imposes civil monetary penalties of \$50,000; (c) suspends his registration for six months; (d) restricts his registration for a period of eighteen months including the imposition of supervision requirements; (e) prohibits him from executing trades for customers for a period of three years; and (f) orders him to comply with his undertakings consented to in his Offer.

V.

FINDINGS OF VIOLATIONS

Solely on the basis of the consent evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Kilbride violated Sections 4b(a)(i), (iii) and (iv), 4c(a)(1), and 4g of the Act, 7 U.S.C. §§ 6b(a)(i), (iii) and (iv), 6c(a)(1) and 6g, and Sections 1.35(d) and 1.38 of the Regulations, 17 C.F.R. §§ 1.35(d) and 1.38 and aided and abetted violations of Section 4c(a)(1) of the Act.

VI.

ORDER

Accordingly, it is hereby ordered that:

1. Kilbride shall cease and desist from further violations of Sections 4b(a)(i), (iii) and (iv), 4c(a)(1), and 4g of the Act, 7 U.S.C. §§ 6b(a)(i), (iii) and (iv), 6c(a)(1) and 6g, and Sections 1.35(d) and 1.38 of the Regulations, 17 C.F.R. §§ 1.35(d) and 1.38;

2. Kilbride shall pay a civil monetary penalty in the amount of fifty thousand dollars (\$50,000) pursuant to a payment plan. Kilbride shall make an annual civil monetary payment ("Annual CMP Payment") as directed by a monitor designated by the Commission (the "Monitor")²⁰ on or before July 31 of each calendar year, starting in calendar year 2003 and continuing for ten years (or until the civil monetary penalty is paid in full, if that happens first).²¹ Kilbride shall make each such Annual CMP Payment by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Kilbride and the name and docket of this proceeding. Kilbride shall simultaneously transmit a copy of the cover letter and the form of payment to the Monitor and to the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2) (1994), if Kilbride fails to pay the full amount of his Annual CMP Payment within fifteen (15) days of the due date, he shall be automatically prohibited from trading on all contract markets and, if he is registered with the Commission, such registration shall be automatically suspended until he shows to the satisfaction of the Commission that payment of the full amount of the Annual CMP Payment with interest thereon to the date of payment has been made.

The amount of Kilbride's Annual CMP Payment shall consist of a portion of: (a) the adjusted gross income (as defined by the Internal Revenue Code) earned or received by him during the course of the preceding calendar year; plus (b) all other net cash receipts, net cash entitlements or net proceeds of non-cash assets received by him during the course of the preceding calendar year. The Annual CMP Payment will be determined as follows:

Where Adjusted Gross Income Plus Net Cash Receipts Total:	Percent of Total to be Paid by Kilbride is:
Up to \$25, 000	0%

²⁰ Kilbride agrees that the National Futures Association is hereby designated as the Monitor. Notice to the Monitor shall be given to Daniel A. Driscoll, Esq., Executive Vice President, Chief Compliance Officer, or his successor, at the following address: National Futures Association, 200 West Madison Street, Chicago, IL 60606.

²¹ Kilbride's ten year CMP period shall run from January 1, 2002 through December 31, 2011. Annual CMP Payments for a calendar year shall take place by July 31 of the following year. Therefore, the final Annual CMP Payment for the year 2011 will occur on or before July 31, 2012. For ten years, based on the information contained in Respondent's sworn financial statements, tax returns and the other financial statements and records provided to the Monitor, the Monitor shall calculate the total amount of civil monetary penalty to be paid by Respondent for the year. Starting in calendar year 2003 and concluding in calendar year 2012, the Monitor shall send written notice to Respondent on or before June 30 with instructions to pay by no later than July 31 the amount of CMP to an account designated by the Monitor.

\$25,000 - \$50,000	20% of the amount above \$25,000
\$50,000 - \$100,000	\$5,000 (this represents 20% of the amount between \$25,000 and \$50,000) plus 30% of the amount above \$50,000
Above \$100,000	\$20,000 (this represents 20% of the amount between \$25,000 and \$50,000, plus 30% of the amount between \$50,000 and \$100,000) plus 40% of the amount above \$100,000;

3. The Commission notes that an order requiring complete immediate payment of the civil monetary penalty against Kilbride would be appropriate in this case, but does not impose one based upon Kilbride's financial condition. Kilbride acknowledges that the Commission's acceptance of the Offer is conditioned upon the accuracy and completeness of the sworn Financial Statement sent to the Commission on November 21, 2002 and other evidence Kilbride has provided regarding his financial condition. Kilbride consents that if at any time following the entry of this Order, the Division of Enforcement ("Division") of the Commission obtains information indicating that Kilbride's representations concerning his financial condition were fraudulent, misleading, inaccurate, or incomplete in any material respect at the time they were made, the Division may, at any time following the entry of the Order, petition the Commission to: (a) reopen this matter to consider whether Kilbride provided accurate and complete financial information at the time such representations were made; (b) require immediate payment of the full amount of the civil monetary penalty as set forth above; and (c) seek any additional remedies that the Commission would be authorized to impose in this proceeding if Kilbride's Offer had not been accepted.
4. Kilbride's registration as a floor broker will be suspended for a period of six months beginning on the first Monday after the entry of the Commission Order accepting the Offer (the "Suspension Date");
5. Kilbride is prohibited for a period of three years, beginning six months after the Suspension Date, from executing trades for customers on or subject to the rules of any contract market;
6. For a period of eighteen months, beginning six months after the Suspension Date:
 - a. Kilbride may not act as a floor trader pursuant to Sections 4e and 4f of the Act, 7 U.S.C. §§ 6e and 6f, and as defined under Section 1.3(x) of the Regulations, 17 C.F.R. §1.3(x), unless his activities as a floor trader are subject to a Supplemental Sponsor Certification Statement ("Certification Statement"), in Form A attached hereto, executed and submitted to the Commission by a qualified sponsor²² ("Sponsor") and in accordance with

²² A "qualified sponsor" shall be an officer of the floor trader's clearing member who has executed Form A, if such officer is a registrant or a principal of a registrant.

Section 3.60(b)(2) of the Regulations, 17 C.F.R. §3.60(b)(2). Immediately upon the sponsor's ceasing to act as Kilbride's sponsor, Kilbride shall stop acting as a floor trader, until he once again obtains a Certification Statement executed and submitted to the Commission by a qualified sponsor, as defined below;

- b. Kilbride shall clear all trades through the FCM at which his Sponsor is an officer;
- c. Kilbride shall not serve on any disciplinary committee, arbitration panel, oversight panel or governing board of any self-regulatory organization ("SRO") registered or subject to regulation by the Commission;
- d. Kilbride shall not directly or indirectly act as a principal, partner, officer, or branch office manager of any entity registered or required to be registered with the Commission; Kilbride shall not directly or indirectly act in any supervisory capacity over anyone registered or required to be registered with the Commission;
- e. The Certification Statement will become part of Kilbride's registration file, and shall be a public document and may be made available to any SRO and state and federal governmental entities;
- f. Kilbride shall send written notification to the Membership Department of all exchanges where he has floor trading privileges that his registration is subject to conditions. Such written notification shall include a copy of the Order and the Certification Statement;
- g. If the Commission, NFA or any other SRO or a law enforcement agency or regulatory agency institutes a proceeding charging Kilbride with violation of the Act, the Regulations, the rules or requirements of NFA or any other SRO, the terms of the Order or a disciplinary offense as defined in Section 1.63(a)(6) of the Regulations, Kilbride shall notify Sponsor, and Kilbride and Sponsor shall immediately notify the Commission and NFA in writing of such action;
- h. Kilbride's registration shall be automatically suspended if, while registered with the Commission and subject to the Certification Statement, he is charged with a disciplinary offense as defined in Section 1.63(a)(6) of the Regulations, 17 C.F.R. § 1.63(a)(6), except that, as to offenses defined in Section 1.63(a)(6)(i)(C) of the Regulations, suspension shall occur if fines aggregating \$5,000 or more are imposed during the period of these restrictions rather than during a calendar year;
- i. If Kilbride's registration is automatically suspended, the period of suspension shall terminate six months after the date of the suspension,

unless the Commission files within that period a Notice of Intent to Suspend, Revoke or Restrict Registration pursuant to Section 3.60(a) of the Regulations, 17 C.F.R. § 3.60(a), pursuant to Section 6c or 6(c) of the Act, 7 U.S.C. §§ 13a-1 or 9. If such Notice or Complaint is filed within the six-month period, his registration shall be suspended, until a final order is entered resolving all issues arising under such Notice or Complaint; and

- j. Within five days after Sponsor notifies Kilbride in writing that he is terminating his sponsorship of that Respondent for any reason, Kilbride and Sponsor will each file with the Director of the Commission's Division of Market Oversight, the NFA and the Membership Department of the exchange where Respondent has trading privileges, a written notice of such termination. Such written notice shall fully set out the reasons that caused the Sponsor to terminate the supervision.
7. Kilbride acknowledges that failure to comply with the Order shall constitute a violation of the Order and may subject him to administrative or injunctive proceedings, pursuant to the Act; and
8. Kilbride is directed to comply with his undertakings:
- a. neither Kilbride nor any of his agents or employees shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order, or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision affects Kilbride's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Kilbride shall take all steps necessary to ensure that his agents or employees, if any, understand and comply with this undertaking.

- b. to cooperate fully with the Commission's Division of Enforcement in this proceeding and any investigation, civil litigation and administrative proceeding related to this proceeding by, among other things: (i) responding promptly, completely, and truthfully to any inquiries or requests for information; (ii) providing authentication of documents; (iii) testifying completely and truthfully; and (iv) not asserting privileges under the Fifth Amendment of the United States Constitution.

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

By the Commission

Jean A. Webb
Secretary to the Commission
Commodity Futures Trading
Commission

Dated: January 31, 2003