

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

In the Matter of:

Ronald Herman Roesler  
Stephenville, Texas,

Respondent.

CFTC Docket No. 02-12

ORDER INSTITUTING PROCEEDINGS  
PURSUANT TO SECTIONS 6(c), 6(d)  
AND 8a OF THE COMMODITY  
EXCHANGE ACT, AS AMENDED, AND  
FINDINGS AND ORDER IMPOSING  
REMEDIAL SANCTIONS

**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Ronald Herman Roesler (“Respondent” or “Roesler”) has violated Section 4c(a) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 *et seq.* (2001) and Commission Regulation 1.56(b), 17 C.F.R. § 1.56(b) (2001). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether Roesler engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

**II.**

In anticipation of the institution of this administrative proceeding, Roesler has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Without admitting or denying the findings herein, Roesler acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c), 6(d) and 8a of the Commodity Exchange Act and Findings and Order Imposing Remedial Sanctions (“Order”). Roesler consents to the use of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.<sup>1</sup>

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<sup>1</sup> Respondent does not consent to the use of the Offer or this Order as the sole basis for any other proceeding brought by the Commission other than a proceeding to enforce the terms of this Order, nor does Respondent consent to the use of the Offer, or the findings in the Order consented to in the Offer, by any other person or entity in this or 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 any other proceeding.

### III.

The Commission finds that:

#### A. SUMMARY

The U.S. Department of Agriculture (“USDA”) administers a Dairy Option Pilot Program (“DOPP”). DOPP trains and subsidizes milk producers learning to hedge their downside price risk with milk put options. To participate in DOPP, producers open accounts with futures commission merchants (“FCMs”) for the sole purpose of buying milk put options and USDA pays 80 percent of the option premium plus \$30 commission per option purchased. The producers open their accounts, and place their orders, with the assistance of registered brokers who sign an agreement with USDA to participate in DOPP.

In July and August 2001, Respondent Ronald Roesler, president of Complete Price Management (“CPM”), a registered introducing broker (“IB”) and DOPP participant, improperly took advantage of the program. Roesler advised dairy producers to open two commodity interest accounts, a DOPP account and a second account (“non-DOPP account”), that were linked for margin purposes. Acting on Roesler’s advice, the producers bought milk put options in their DOPP accounts and sold puts with the same expiration month and the same strike price at the same or nearly the same premium in their non-DOPP accounts, leaving them with no actual position in the market and none of the downside price protection that DOPP was established to provide. This trading strategy allowed the producers to pocket some or all of the premium paid by USDA in virtually risk-free transactions. The transactions constitute wash sales as prohibited by Section 4c(a) of the Act. Roesler also represented to prospective DOPP customers that CPM would guarantee them against loss, in violation of Commission Regulation 1.56(b), 17 C.F.R. § 1.56(b).<sup>2</sup>

#### B. RESPONDENT

Respondent Ronald Herman Roesler is 56 years old and resides in Stephenville, Texas. He has been registered with the Commission as an associated person (“AP”) of CPM, a registered IB, and has been listed as one of its principals, since May 1986. During all times relevant to this matter, Roesler was the president of CPM and was responsible for all business decisions and customer relations. Roesler is the only signatory on CPM’s bank accounts and is responsible for supervising the other APs who work in CPM’s six branch offices.

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<sup>2</sup> USDA became aware of Roesler’s activities in early August 2001 and contacted the Commission soon thereafter. In November 2001, USDA issued an Informational Memorandum to all participating producers and IBs in order to clarify that transactions involving the simultaneous purchase and sale of put options are violative of DOPP rules. The Informational Memorandum can be found on the USDA Risk Management Agency website at “[www.rma.usda.gov/news](http://www.rma.usda.gov/news).”

Roesler is also the president and majority shareholder of Ron Roesler & Associates, Inc. (“Roesler & Associates”), a Texas corporation. Roesler & Associates is an agricultural consulting business and is the parent company of CPM. During July and August 2001, Roesler & Associates shared CPM’s office and email addresses. Roesler & Associates has never been registered with the Commission in any capacity.

### C. FACTS

DOPP gives milk producers the opportunity to learn how futures and options markets work and gives them first-hand experience in buying milk put options to ensure a minimum price for their milk. DOPP teaches producers how to use the put options as a kind of price insurance, in that when milk prices fall below the option’s strike price, the option increases in value and makes up the difference between the market price of the milk and the cost of the option. As an incentive to learn about this price risk management technique, the USDA pays 80 percent of the put option premium plus \$30 commission per option purchased. To be eligible for the subsidy, the put option must hedge the dairy producer’s milk production and cannot be sold or exercised before one month prior to the expiration date. In order to participate, producers must attend a DOPP training session, apply to participate, and then select a DOPP-approved broker who assists them in opening a commodity interest account at an FCM. The broker must be registered and in good standing with the National Futures Association, attend a DOPP training session, and execute and comply with a written agreement with the USDA.

In June 2001, Roesler signed a DOPP broker agreement with USDA on behalf of himself and CPM. In July and August 2001, Roesler improperly took advantage of the program. He drafted and distributed to prospective DOPP customers a letter, on Roesler & Associates letterhead, in which he offered to pay their 20 percent share of the option premium, and to guarantee them against loss, in exchange for their agreement to pay Roesler any amount exceeding \$3,500 that they might receive from the FCM when the options positions were closed out. In a document entitled “Dairy Option Pilot Agreement” that Roesler drafted and distributed along with the solicitation letter, Roesler explained that he would purchase the “highest strike price puts available” and that he would have the FCM “pay out to the producer any excess funds not required in the account whenever possible.” Roesler computed that USDA’s payment of 80 percent of the premium, combined with the risk-negating trading strategy he intended to follow, would make it likely that the producers’ commodity interest account would have a balance exceeding \$3,500. At least one customer accepted this offer. The DOPP customers, acting on Roesler’s advice, opened two commodity interest accounts, a DOPP account and a non-DOPP account, that were linked for margin purposes. The customers bought put options in their DOPP accounts and sold put options with the same expiration month and the same strike price at the same or nearly the same premium in their non-DOPP accounts, leaving them with no actual position in the market and none of the downside price protection that DOPP was established to provide.

The customers stood to benefit financially from these transactions. Because their two accounts were linked for margin purposes, and because the accounts had equal and

opposite positions, the FCM's accounting system determined that no margin was due from them. This strategy allowed them to obtain some or all of the 80 percent of the DOPP put option premium paid by USDA. Roesler also stood to benefit financially to the extent that he charged commissions for submitting both the orders to buy the DOPP put options and the orders to sell the non-DOPP put options.

#### 1. The Wash Sales

As discussed above, during July and August 2001, Roesler solicited and accepted paired DOPP customer orders, each pair containing an order to buy put options in the DOPP account and to sell put options with the same expiration month and the same strike price at the same or nearly the same premium in the non-DOPP account. Roesler submitted the paired orders for execution in a manner designed to ensure that the customers were only exposed to minimal risk prior to execution and were not exposed to any market risk after both their orders to buy and their orders to sell had been executed. Any gain or loss in one account would be offset by an equal and opposite gain or loss in the other account. The transactions had no economic substance and thus were wash sales.

#### 2. The Representations That CPM Would Guarantee Customers Against Loss

As discussed above, during July and August 2001, Roesler wrote and distributed a letter to prospective DOPP customers, on Roesler & Associates letterhead, in which he offered to pay their 20 percent portion of the DOPP option premium, and to guarantee them against loss, in exchange for their agreement to pay Roesler any amount exceeding \$3,500 that they might receive from the FCM. The solicitation letter read, in part, "**Our company would like to offer you the opportunity to learn how milk options work without you risking a penny of your money, and what's more, guarantee you a profit while you learn.**" (emphasis in original) The solicitation letter also stated, "**Therefore, you have NO cost and NO risk.**" (emphasis in original)

### D. VIOLATIONS OF THE ACT AND REGULATIONS

#### 1. Roesler Offered to Enter Into, Entered Into, and Confirmed the Execution of Transactions That Were of the Character of Wash Sales

Section 4c(a) of the Act provides, in pertinent part, that, "It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2)," 7 U.S.C. 6c(a)(1), and that "A transaction referred to in paragraph (1) is a transaction that is, is of the character of, or is commonly known to the trade as, a 'wash sale' ...." 7 U.S.C. 6c(a)(2)(A)(i). The Commission has recently held that, in order to prove that a particular transaction is a wash sale, the Division must initially prove that the transaction achieved a wash result. *In the Matter of Piasio, et al.*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,276 at 50,685 (CFTC September 29, 2000). "The factors that show a wash result are (1) the purchase and sale (2) of the same delivery month of the same futures contract (3) at the same (or a similar) price." *Id.* The Division must prove that at the time a respondent chose to participate in the transactions, they "knew the transactions were designed to achieve a wash result in a

manner that negated risk.” *Id.* In a wash sales prosecution, the Division must also prove that a respondent intended not to effect a *bona fide* trade; however, scienter may be inferred from circumstantial evidence. *Reddy v. CFTC*, 191 F.3d 109, 119 (2<sup>nd</sup> Cir. 1999). Although evidence of motive strengthens an inference of intent, motive is not an essential element of a wash sale. *Id.*

Roesler solicited and accepted paired DOPP customer orders to buy and sell puts with the same expiration month and the same strike price at the same or nearly the same premium and submitted those orders for execution in a manner designed to eliminate market risk. These orders had a wash result – *i.e.*, they left the customers with no actual market position and without the downside price protection intended by DOPP. By so doing, Roesler offered to enter into, entered into and confirmed the execution of wash sales in violation of Section 4c(a).

## 2. CPM Represented to Prospective Customers That It Would Guarantee Them Against Loss

Commission Regulation 1.56(b)(1) provides that, “No ... introducing broker may in any way represent that it will, with respect to any commodity interest in any account carried by [a] futures commission merchant for or on behalf of any person: ... (3) Guarantee such person against loss.” 17 C.F.R. § 1.56(b)(1). In this case, Roesler made written and explicit assurances to prospective DOPP customers that clearly fell within the prohibitions of Regulation 1.56(b). Although Roesler made the representation on the letterhead of Roesler & Associates, a non-registrant, the letter stated that CPM would execute the trades. Roesler owns and controls both CPM and Roesler & Associates. Roesler and CPM, not Roesler & Associates, entered into the DOPP broker agreement with USDA.

## 3. Roesler is Liable as a Controlling Person for CPM’s Violation of Regulation 1.56(b)

Section 13(b) of the Act provides: “Any person who, directly or indirectly, controls any person who has violated any provision of the Act ... may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person.” In order to establish liability, after proving that CPM committed a violation of the Act, the Division of Enforcement must also prove that Roesler controlled CPM and that he knowingly induced the acts constituting the violation or failed to act in good faith. *Monieson v. CFTC*, 996 F.2d 852, 858 (7<sup>th</sup> Cir. 1993). In this case, Roesler directly and knowingly induced the underlying acts.

### a. Roesler is a “Controlling Person”

During all times relevant to this matter, Roesler was the president, a principal and an AP of CPM. He was solely responsible for all business decisions and customer relations. Roesler was the only signatory on CPM’s bank accounts and was responsible for supervising the other APs who work in CPM’s six branch offices. He solicited and accepted each of the customers’ paired orders and submitted them for execution. As

previously stated, Roesler signed the broker agreement with USDA for CPM to become a participating broker.

b. Roesler Knowingly Induced CPM's Violation of Regulation 1.56(b)

Roesler knowingly induced CPM's violation of Regulation 1.56(b) because he personally committed the majority of the acts upon which the violation is predicated. He composed the solicitation material himself and caused it to be distributed to prospective DOPP customers. The conduct giving rise to the violation could not have happened but for Roesler's direct and exclusive involvement.

**IV.**

OFFER OF SETTLEMENT

Roesler has submitted an Offer of Settlement in which, without admitting or denying the findings herein, he acknowledges service of this Order, admits the jurisdiction of the Commission with respect to the matters set forth herein, and 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 objection to the staff's participation in the Commission's consideration of the Offer; (6) 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, §§ 231-232, 110 Stat. 862-63, 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 (7) any claim 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.

Roesler stipulates that the record basis on which this Order may be entered shall consist solely of the findings in this Order to which he has consented in the Offer. Roesler also consents to the use of the findings contained in this Order in this proceeding and in any other proceedings brought by the Commission or to which the Commission is a party. Roesler further consents to the Commission's issuance of this Order, which makes findings as set forth herein and orders that Roesler: (1) cease and desist from violating Section 4c(a) of the Act, 7 U.S.C. § 6c(a), and Commission Regulation 1.56(b), 17 C.F.R. § 1.56(b); (2) pay a civil monetary penalty in the amount of Seventeen Thousand Five Hundred Dollars (\$17,500) as set forth below; and (3) comply with his undertaking as set forth below.

**V.**

FINDING OF VIOLATIONS

Solely on the basis of Roesler's consent, as evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Roesler violated Section 4c(a) of the Act, 7 U.S.C. § 6c(a), and Commission Regulation 1.56(b), 17 C.F.R. § 1.56(b).

## VI.

### ORDER

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

1. Roesler cease and desist from violating Section 4c(a) of the Act, 7 U.S.C. § 6c(a), and Commission Regulation 1.56(b), 17 C.F.R. § 1.56(b);
2. Roesler pay a civil monetary penalty in an amount of Seventeen Thousand Five Hundred Dollars (\$17,500) within ten (10) business days of the date of this Order and to make such payment by U.S. postal money order, certified check, or bank money order, made payable to the Commodity Futures Trading Commission, and addressed to Dennese Posey, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Ronald Herman Roesler and the name and docket number of the proceeding. A copy of the cover letter and the form of payment shall be simultaneously transmitted to Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if Respondent fails to make payment of his penalty within fifteen (15) days of the due date, he shall be automatically prohibited from trading on or subject to the rules of any registered entity, as defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29), and his registration and any other registration he may seek shall be suspended automatically, until he shows to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date payment has been made; and
3. Roesler also agrees that neither he nor any of his 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 the Order or creating, or tending to create, the impression that the Order is without factual basis; provided, however, that nothing in this provision shall affect Roesler's: (i) testimonial obligations; or (ii) right to take contrary legal positions in other proceedings to which the Commission is not a party. Roesler will undertake all steps necessary to assure that all agents and employees under his authority and control understand and comply with this agreement.

By the Commission.

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

Dated: May 22, 2002