

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

**In the Matter of:**

**Michael Moster,**

**Respondent.**

CFTC Docket No. 09-08

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

**I.**

The Commodity Futures Trading Commission ("Commission") has reason to believe that Michael J. Moster ("Moster" or "Respondent") has violated Section 4b(a)(2)(ii) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6b(a)(2)(ii) (2006). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Moster engaged in the violations set forth herein, and to determine whether any order should be issued imposing remedial sanctions.

**II.**

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

<sup>1</sup> Moster consents to the entry of this Order, the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Moster does not consent to the use of the Offer, or the findings consented to in this Order, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Moster consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding.

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### III.

#### A. SUMMARY

During a three-day period in January 2004, Moster, who was employed as a proprietary trader for the Bank of America, booked a series of fictitious futures trades that, by the following week, had inflated the value of his trading book by over 12 million dollars. In three false reports made to the bank, Moster claimed to have purchased 4,000 10-year Treasury note futures contracts. Upon discovery of the fictitious trades, Moster resigned from the bank, and the bank's subsequent internal audit concluded that Moster not only falsely reported fictitious trades but also carried out a pattern of deception in an attempt to conceal his conduct from his supervisors. Moster's making of such false reports or records violated Section 4b(a)(2)(ii) of the Act.

#### B. RESPONDENT

**Michael J. Moster** resides at 37 Wall St., Apt. 111A, New York, NY 10005. Moster, while not registered during his employment with of the bank, was subsequently registered with the Commission from October 12, 2005 to February 12, 2007 as an associated person for a registered introducing broker and futures commission merchant.

#### C. FACTS

From 1999 to 2004, Moster was employed by the Bank of America in connection with the bank's proprietary rates trading desk located in Chicago, Illinois. Moster had authority to trade various contracts, including futures and Treasury notes and bonds, within certain established limits. Traders, including Moster, were required to truthfully and accurately record their trading activity in futures and securities. In this regard, traders submitted daily handwritten reports of their trading activity on "trade blotters." The information contained within the trade blotters were incorporated into the Bank of America's reports and statements, including their profit and loss statements. Supervisory personnel, including the bank's officers, would receive such reports and relied upon them in order to exercise their oversight authority with respect to the traders' activity.

On January 5, 6 and 7, 2004, Moster, in his capacity as a trader, established a large short position in 10-year Treasury bonds. During the same time period, Moster booked a series of fictitious futures trades. Specifically, Moster booked into the bank's internal profit and loss balance sheet a series of fictitious transactions that made it appear as if he had purchased approximately 4,000 10-year Treasury note futures contracts. The intended effect of the fabricated long 10-year Treasury note futures position was to conceal the risk associated with his large short position in Treasury bonds by making it appear as if the long futures position hedged that risk. On January 5, 6 and 7, 2004, Moster provided other bank personnel with his trade blotter containing the fictitious futures transactions.

Over the next five trading days, the value of Moster's fictive 4,000 long Treasury note futures position increased to over \$12 million, while his actual Treasury bond position fell by a corresponding value. Moster successfully managed to conceal the fact of his fictive trades by convincing relevant support personnel that the Treasury futures contracts were legitimate. However, on January 15, 2004, the bank discovered the false nature of Moster's purported Treasury note futures contracts and he resigned from the bank. On that same day, Moster's uncovered Treasury bond positions were liquidated, resulting in a loss to the bank of approximately \$12.2 million.<sup>2</sup>

#### D. LEGAL DISCUSSION

Section 4b(a)(2)(ii) of the Act provides that it is unlawful for any person, in or in connection with any order to make or the making of a futures contract for or on behalf of any other person, willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof.

Delivering, or causing the delivery of, false records or reports constitutes a violation of Section 4b(a)(2) of the Act. *CFTC ex rel Kelley v. Skorupskas*, 605 F. Supp. 923, 932-33 (E.D. Mich. 1985) (defendant violated section 4b(a) of the Act by delivering false monthly account statements to commodity pool participants); *CFTC v. Weinberg*, 287 F. Supp. 2d. 1100, 1107 (C.D. Cal. 2003) (false and misleading statements as to the amount and location of investors' money violated Section 4b(a) of the Act); *CFTC v. Noble Wealth Data Info. Serv., Inc.*, 90 F. Supp. 2d. 676, 685-87 (D. Md. 2000) (defendants violated Section 4b(a) of the Act through the delivery of false account statements).

An employee who provides his employer with false information to conceal trading losses violates this provision. For example, in *In re Hartog and Baumgard*, the general manager of a cooperative grain elevator engaged in unauthorized speculative trading that resulted in losses of approximately \$1,000,000. *In re Hartog and Baumgard*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,090 at 49,672 (CFTC Mar. 7, 2000).<sup>3</sup> As part of that scheme, the respondent created statements that concealed the

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<sup>2</sup> Based upon the above conduct, Moster pled guilty on September 18, 2008 to a one-count violation of 18 U.S.C. § 1005 (false entry into the books and records of a bank) in the Southern District of New York. His sentencing date is scheduled for February 19, 2009. Under the criminal sentencing guidelines, Moster will be required to make full restitution of the over \$12 million loss he caused to the Bank of America. Accordingly, the Commission has elected to recognize the restitution made in the context of the criminal case and forego the inclusion of restitution in this matter. In addition, this Order provides that Moster must pay and satisfy any criminal restitution obligation that is ordered before the payment of the civil monetary penalty imposed herein.

<sup>3</sup> It has also been recognized by both the Commission and courts that under the Act an employee can cheat or defraud their employer. See *Merrill Lynch Futures, Inc. v. Kelly*,

nature of the trading and the trading losses. Such false reports constituted a discrete type of fraud actionable under Commission Regulation ("Regulation") 33.10(b). *Id.* Similar to the conduct addressed by the Commission in *In re Hartog and Baumgard*, Moster's generation of false internal corporate reports and false statements to conceal his fictive trades and his trading losses violated Section 4b(a)(2)(ii) of the Act.

#### IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Section 4b(a)(2)(ii) of the Act, 7 U.S.C. § 6b (a)(2)(ii) (2006).

#### V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which, without admitting or denying the findings herein, he:

- A. Acknowledges receipt and service of the Order;
- B. Admits the jurisdiction of the Commission with respect to the matters set forth in this Order;
- C. Waives: the service and filing of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; any and all objections to the participation by any member of the Commission's staff in consideration of the Offer; any claim of Double Jeopardy based upon the institution of this proceeding or the entry of any order imposing a civil monetary penalty or other relief; any and all claims that he may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2008), relating to, or arising from, this proceeding; any and all claims that it may possess under the Small Business Regulatory Enforcement Act, 1996 HR 3136, Pub. L. 104-121, §§ 231-232, 110 Stat. 862-63 (Mar. 29, 1996), as amended by Pub.L. No. 110-28, 121 Stat. 112 (2007), relating to or arising from this proceeding;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of this Order, including the findings in this Order; and
- E. Consents solely on the basis of the Offer, to the entry of this Order that:

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585 F. Supp. 1245, 1251-1253 (S.D.N.Y. 1984) (a clerk at investment firm who participated in a fraudulent scheme by accepting certain losing trades in the firm's error account was properly charged with violating Section 4b of the Act); *In re Steven G. Soule*, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,690 at 55,927 (CFTC Feb. 11, 2004) (Commission settlement order finding that an in-house trader for an oil company who allocated trades in collusion with others to defraud his employer of profitable trades and altered his in-house paper work to conceal the scheme violated Section 4b of the Act).

1. makes findings by the Commission that Moster violated Section 4b(a)(2)(ii) of the Act,
2. orders Moster to cease and desist from violating Section 4b(a) of the Act as amended by The Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 13102, 122 Stat. 1651;
3. orders Moster to pay a civil monetary penalty in the amount of Three Hundred and Sixty Thousand Dollars (\$ 360,000), plus post-judgment interest, within ten (10) days of the date of the entry of the Order; *provided*, Moster's payment of criminal restitution as part of the criminal sentence he receives relating to the same operative facts, shall have priority over payment of the civil monetary penalty imposed herein;
4. permanently prohibits Moster from, directly or indirectly, trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29), for his own account, for any account in which he has a direct interest or indirect interest, or for any other account for or on behalf of any other person or entity, whether by power of attorney or otherwise, and all registered entities shall refuse him all privileges; and
5. orders Moster to comply with his undertaking consented to in his Offer and set forth below in Section VI of this Order.

Upon consideration, the Commission has determined to accept the Respondent's Offer.

## VI.

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

1. Moster shall cease and desist from violating Section 4b(a) of the Act, as amended by The Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 13102, 122 Stat. 1651;
2. Moster shall pay a civil monetary penalty in the amount of Three Hundred and Sixty Thousand Dollars (\$360,000), plus post-judgment interest, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, within ten (10) days of the date of the entry of the Order (the "CMP Obligation"); *provided*, Moster's payment of criminal restitution as part of the criminal sentence he receives relating to the same operative facts, shall have priority over payment of the civil monetary penalty imposed herein. Respondent shall pay this CMP Obligation by making 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, 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: Marie Bateman AMZ-300  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: 405-954-6569

If payment by electronic transfer is chosen, Moster shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall comply fully with those instructions. Moster shall accompany payment of the CMP Obligation with a cover letter that identifies Moster, and the name and docket number of this proceeding. Moster shall simultaneously transmit a copy of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581 and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address; and;

3. Post-judgment interest on the CMP Obligation shall accrue commencing on the eleventh day after the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry this Order pursuant to 28 U.S.C. § 1961.

4. Moster is permanently prohibited from, directly or indirectly, trading on or subject to the rules of any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29), for his own account, for any account in which he has a direct interest or indirect interest, or for any other account, whether by power of attorney or otherwise, and all registered entities shall refuse him all privileges.

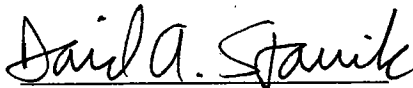
5. Moster shall comply with the following undertakings set forth in the Offer:

- (a) Moster shall never apply for registration or claim exemption from registration with the Commission in any capacity, and shall never engage 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), or act as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).
- (b) Neither Moster nor any of his employees, agents, attorneys or representatives 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 Respondent's: (i) testimonial obligations; or (ii) right to take factual or legal positions in other proceedings to

which the Commission is not a party. Respondent shall undertake all steps necessary to ensure that all of his employees, agents, attorneys and representatives under his authority and/or actual or constructive control understand and comply with this undertaking.

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

**By the Commission:**



David A. Stawick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: February 11, 2009