

III.

The Commission finds the following:

A. Summary

From at least January 2004 and continuing through at least December 2008 (“the relevant period”), Gage’s Fertilizer, while not registered with the Commission in any capacity, operated as a futures commission merchant (“FCM”). In the regular course of its grain elevator business, Gage’s Fertilizer, by and through Gage, its president and associated person (“AP”), solicited and/or accepted orders from customers for the purchase and sale of commodity option (“option”) contracts and, in connection with those orders, Gage’s Fertilizer accepted money from or extended credit to Respondents’ customers. Respondents then executed, cleared, and commingled their customers’ option contracts in one of Gage’s Fertilizer’s proprietary trading accounts at one of three FCMs.

During the relevant period, Respondents directed the option trading of approximately one hundred Gage’s Fertilizer customers (who are farmers and farm entities) in Gage’s Fertilizer’s proprietary trading accounts and billed customers over \$315,000 in brokerage fees. By virtue of this conduct and the further conduct described herein, Gage’s Fertilizer violated Sections 4d(a) and 4k(1) of the Act, 7 U.S.C. §§ 6d(a) and 6k(1) (2006), and Regulation 33.3(b)(1)(i) and (2), 17 C.F.R. § 33.3(b)(1)(i) & (2) (2009). Pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Gage, as the controlling person of Gage’s Fertilizer, is liable for those violations. In addition, by virtue of his own conduct, Gage violated Section 4k(1) of the Act, 7 U.S.C. § 6k(1) (2006).

B. Respondents

Gage’s Fertilizer & Grain, Inc. is, and was during the relevant period, a Missouri corporation with a principal place of business in Stanberry, Missouri. Gage’s Fertilizer has never been registered with the Commission in any capacity.

Steven W. Gage is an individual who resides in Stanberry, Missouri. Gage owns sixty to seventy percent of Gage’s Fertilizer and serves as the company’s president and director. He is, and was during the relevant period, in charge of all aspects of Gage’s Fertilizer’s operations, including all trading activity. Gage oversees all five of Gage’s Fertilizer’s grain elevator operations and all of Gage’s Fertilizer’s employees. As such, Gage is and was during the relevant period the controlling person of Gage’s Fertilizer. Gage has never been registered with the Commission in any capacity.

C. Facts

Gage’s Fertilizer is a grain elevator and farm supply company that has been in business since 1982. Gage’s Fertilizer operates grain elevators in Stanberry, Missouri; Kansas City, Kansas; St. Joseph, Missouri; Albany, Missouri; and Bethany, Missouri and is and was during the relevant period the primary area supplier of numerous farm products and services, including, *inter alia*: grain merchandising, grain storage, feed, equipment, fertilizer, chemicals, and seed.

During the relevant period, Gage's Fertilizer offered customers a variety of grain-marketing plans and price-risk management tools. For customers interested in grain-marketing plans and price-risk management tools, Respondents prepared worksheets analyzing customers' costs of production, which included land, fertilizer, chemicals, harvesting, and other crop costs. Based on the cost of production calculation, Respondents then advised customers regarding the selling price required to achieve a profit on the sale of their grain. To lock in a desired selling price, Gage's Fertilizer and the customer entered into an oral agreement whereby a customer sold grain to Gage's Fertilizer and Gage's Fertilizer purchased option contracts (typically from the Chicago Board of Trade) for and on the customer's behalf. Further, in some instances, Gage's Fertilizer purchased option contracts for and on a customer's behalf that were not tied to Gage's Fertilizer purchasing any grain from that customer.

Customers telephoned or otherwise orally instructed Respondents regarding their option trade orders. Respondents did not record or document the customers' orders prior to placing the option trades. Gage personally took and accepted all customer trade orders and in turn directed the execution of customer option trades by Gage's Fertilizer. As with all services provided by Gage's Fertilizer, Respondents typically debited customers' general accounts at Gage's Fertilizer for these transactions rather than accept immediate payment for them. Between January 2004 and December 2008, Respondents purchased thousands of option contracts on behalf of approximately one hundred customers.

Gage or one of Gage's Fertilizer's employees (acting pursuant to Gage's oral instructions) telephoned the customer trade orders either to an introducing broker or directly to one of three FCMs used by Gage's Fertilizer. All of the customer option trades solicited and/or accepted by Respondents (including occasional speculative option contracts in commodities such as silver, gold, cotton, coffee, etc.) were executed in one of several trading accounts titled in Gage's Fertilizer's name at one of these three FCMs. These trading accounts also were used by Respondents to purchase and sell option contracts for themselves. Customer option trades were neither maintained nor identified separately from Respondents' proprietary trades.

Gage's Fertilizer received facsimile or e-mail trade confirmations from these FCMs that detailed the previous day's option trades in each of Gage's Fertilizer's accounts. Gage's Fertilizer's bookkeeper typically reviewed the confirmations. After orally consulting with Gage shortly after the trades were executed, or as much as several days later, the bookkeeper identified and assigned customer option trades by handwriting abbreviated customer names next to certain trades.

Using the handwritten customer trade allocations as the starting point of reference, Gage's Fertilizer followed customer option trades through liquidation or expiration. As the bookkeeper reviewed daily trade confirmations, he tracked customer option trades by handwriting a customer's abbreviated name next to that customer's open or closed positions, as well as next to that customer's trading profits and/or losses. Further, as a customer's options approached expiration, Respondents notified the customer so that the customer had adequate time to inform Respondents whether to close the position or exercise the option.

Utilizing his handwritten notations assigning customer option trades, positions, profits, and losses, the bookkeeper prepared daily and monthly internal customer trade summaries. Gage's Fertilizer did not provide the daily and monthly trade summaries to its customers; instead, Gage's Fertilizer mailed each customer a comprehensive, monthly invoice detailing all of his/her transactions with Gage's Fertilizer. These invoices included farm equipment and supply charges, as well as option trades, trading profits and losses, and brokerage fees.

Throughout the relevant period, Gage's Fertilizer generally charged customers a standard brokerage fee of \$30 per option contract purchased. From January 2004 to December 2008, Respondents billed customers² more than \$315,000 in brokerage fees. In turn, Respondents were charged more than \$164,000 in brokerage fee by the FCMs at which these transactions were executed.

D. Legal Discussion

1. Gage's Fertilizer Violated Section 4d(a) of the Act, 7 U.S.C. § 6d(a) (2006), by Engaging as an FCM While Unregistered.

Section 1a(12) of the Act, 7 U.S.C. § 1a(12) (2006),³ defines an FCM as:

an individual, association, partnership, corporation, or trust that— (A) is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility; and (B) in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

Pursuant to Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2006), it is unlawful for any individual or corporation to engage as an FCM, unless such individual or corporation has registered with the Commission as an FCM and such registration has not expired or been suspended. Further, pursuant to Section 4d(a)(2) of the Act, 7 U.S.C. § 6d(2) (2006), an FCM (whether registered or unregistered) must:

treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts as belonging to the customer. Such money, securities, and property shall be

² These customers included numerous entities related to Gage's Fertilizer and/or Gage, such as Brad Gage; Scott Gage; Gruco Acres, LLC; Luco Acres, LLC; Merco Acres, LLC; Gage Farms, Inc.; and Wayco Acres, LLC). These related entities were charged more than \$62,000 in brokerage fees by Respondents for options transactions conducted on their behalves.

³ Pursuant to Regulation 33.2(a)(2), 17 C.F.R. § 33.2(a)(2) (2009), Sections 1a, 4d, and 6 of the Act, among other sections, apply to domestic exchange-traded option transactions as though the provisions of those sections included specific references to commodity option transactions.

separately accounted for and shall not be commingled with the funds of such [FCM] or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held.

As set forth above, from at least January 2004 through December 2008, without registering as an FCM, Gage's Fertilizer engaged as an FCM by soliciting and accepting orders for the purchase and sale of domestic exchange-traded commodity option contracts and by, in or in connection with such solicitations or acceptances of orders, accepting money, securities, or property (or in extending credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that resulted therefrom. This conduct violates Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1) (2006).

Further, as set forth above, while acting as an unregistered FCM from at least January 2004 through December 2008, Gage's Fertilizer failed to treat and deal with all money, securities, and property received by it to margin, guarantee, or secure the trades or contracts of Respondents' customers, or accruing to such customers as the result of such trades or contracts, as belonging to the customers. Such money, securities, and property were not separately accounted for and/or were commingled with the funds of Respondents and/or were used to margin or guarantee the trades or contracts, or to secure or extend the credit of, customers or persons other than the one for whom the same was held. This conduct violates Section 4d(a)(2) of the Act, 7 U.S.C. § 6d(a)(2) (2006).

2. Gage Violated Section 4k(1) of the Act, 7 U.S.C. § 6k(1) (2006), by Failing to Register as an AP of Gage's Fertilizer, and Gage's Fertilizer Violated Section 4k(1) of the Act, 7 U.S.C. § 6k(1) (2006), and Regulation 33.3(b)(2), 17 C.F.R. 33.3(b)(2) (2009), by Allowing Gage to Do So.

Regulation 1.3(aa)(1), 17 C.F.R. § 1.3(aa)(1) (2009), defines an "associated person" to include any "natural person" associated with an FCM "as a partner, officer, or employee . . . in any capacity which involves (i) the solicitation or acceptance of customers' or option customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged." Section 4k(1) of the Act, 7 U.S.C. § 6k(1) (2006), states that it is unlawful for:

any person to be associated with a [FCM] as a partner, officer, or employee . . . in any capacity that involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission . . . as an associated person of such [FCM] It shall be unlawful for a[n FCM] . . . to permit such a person to become or remain associated with the [FCM] . . . in any such capacity if such [FCM] . . . knew or should have known that such person was not so registered

Similarly, Regulation 33.3(b)(2), 17 C.F.R. § 33.3(b)(2) (2009), states that it is unlawful for:

Any person registered or required to be registered as a futures commission merchant . . . under the Act to permit another person to become or remain

associated with such person as a partner, officer, employee, agent or representative . . . in any capacity involving the solicitation or acceptance of an order from an option customer (other than in a clerical capacity) for any commodity option transaction, or the supervision of any person or persons so engaged, if such person knows or should have known that such other person is or was not registered

Between at least January 2004 and December 2008, while acting in his capacity of president of FCM Gage's Fertilizer, Gage solicited and accepted orders for the purchase and sale of domestic exchange-traded option contracts while failing to register as an AP of Gage's Fertilizer, in violation of Section 4k(1) of the Act, 7 U.S.C. § 6k(1) (2006). Further, Gage's Fertilizer permitted Gage to become and remain associated with Gage's Fertilizer in a capacity involving solicitation or acceptance of customer orders when it knew, or should have known, that Gage was not registered as an AP of Gage's Fertilizer, in violation of Section 4k(1) of the Act, 7 U.S.C. § 6k(1) (2006), and Regulation 33.3(b)(2), 17 C.F.R. § 33.3(b)(2) (2009).

3. Gage's Fertilizer Violated Regulation 33.3(b)(1)(i) by Soliciting and Accepting Orders from Customers for the Purchase and Sale of Domestic Exchange-Traded Option Contracts Without Registering Under the Act with the Commission as an FCM.

Regulation 33.3(b)(1)(i), 17 C.F.R. § 33.3(b)(1)(i) (2009), states that it is unlawful for:

[a]ny person to solicit or accept orders from an option customer . . . for any commodity option transaction, or to supervise any person or persons so engaged, unless such person is: (i) Registered as a futures commission merchant under the Act

As set forth above, from at least January 2004 through December 2008, Gage's Fertilizer solicited and accepted orders from customers for the purchase and sale of domestic exchange-traded option contracts without registering as an FCM, in violation of Regulation 33.3(b)(1)(i), 17 C.F.R. § 33.3(b)(1)(i) (2009).

4. As Controlling Person of Gage's Fertilizer, Gage Is Liable for the Violations of the Act and Regulations Committed by Gage's Fertilizer.

During the relevant period, Gage controlled Gage's Fertilizer, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, Gage's Fertilizer's conduct described above; therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006), Gage is liable for Gage's Fertilizer's violations of Sections 4d(a) and 4k(1) of the Act, 7 U.S.C. §§ 6d(a) and 6k(1) (2006), and Regulation 33.3(b)(1)(i) and (2), 17 C.F.R. § 33.3(b)(1)(i) & (2)(2009).

5. Gage's Fertilizer Is Liable Under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009), for Its Employees' and Agents' Conduct.

Gage and other employees and agents of Gage's Fertilizer committed the unlawful acts, omissions, and failures described above within the course and scope of their office, employment, and agency at Gage's Fertilizer. Gage's Fertilizer, therefore, is liable under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2006), and Regulation 1.2, 17 C.F.R. § 1.2 (2009), as principal for its officers', employees', or other agents' acts and conduct that violated the Act and Regulations.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Gage's Fertilizer violated Sections 4d(a) and 4k(1) of the Act, 7 U.S.C. §§ 6d(a) and 6k(1) (2006), and Regulation 33.3(b)(1)(i) and (2), 17 C.F.R. § 33.3(b)(1)(i) & (2) (2009), and that Gage violated Section 4k(1) of the Act, 7 U.S.C. § 6k(1) (2006). Further, based on the foregoing, the Commission finds that Gage, as controlling person of Gage's Fertilizer, is liable for Gage's Fertilizer's violations of Sections 4d(a) and 4k(1) of the Act, 7 U.S.C. §§ 6d(a) and 6k(1) (2006), and Regulation 33.3(b)(1)(i) and (2), 17 C.F.R. § 33.3(b)(1)(i) & (2) (2009), pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006).

V.

OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order;
- C. Waive: the filing and service 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 and all claims that it may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1, et seq. (2009), relating to, or arising from, this proceeding; any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 2006, Pub. L. No. 104-121 §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and 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;

- D. Stipulate that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which the Respondents have consented; and
- E. Consent, solely on the basis of the Offer, to entry of this Order that:
1. makes findings by the Commission that Gage's Fertilizer violated Sections 4d(a) and 4k(1) of the Act, 7 U.S.C. §§ 6d(a) and 6k(1) (2006), and Regulation 33.3(b)(1)(i) and (2), 17 C.F.R. § 33.3(b)(1)(i) & (2) (2009), and that Gage is liable for those violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2006);
 2. makes findings by the Commission that Gage violated Section 4k(1) of the Act, 7 U.S.C. § 6k(1) (2006);
 3. orders Respondents and their successors and assigns to cease and desist from violating Sections 4d(a) and 4k(1) of the Act, 7 U.S.C. §§ 6d(a) and 6k(1) (2006), and Regulation 33.3(b)(1)(i) and (2), 17 C.F.R. § 33.3(b)(1)(i) & (2) (2009);
 4. orders Respondents jointly and severally to pay a civil monetary penalty in the amount of seventy-five thousand dollars (\$75,000) within ten (10) days of the date of the entry of this Order; and
 5. orders Respondents and their successors and assigns to each comply with the undertakings consented to in the Offer and set forth below in Section VI of this Order.

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

VI.

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondents and their successors and assigns shall cease and desist from violating Sections 4d(a) and 4k(1) of the Act, 7 U.S.C. §§ 6d(a) and 6k(1) (2006), and Regulation 33.3(b)(1)(i) and (2), 17 C.F.R. § 33.3(b)(1)(i) & (2) (2009).
2. Respondents jointly and severally shall pay a civil monetary penalty in the amount of seventy-five thousand dollars (\$75,000) within ten (10) days of the date of the entry of this Order. Respondents shall pay this civil monetary penalty 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 by other than 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, Respondents shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the civil penalty with a cover letter that identifies Respondents and the name and docket number of this proceeding. Respondents shall simultaneously submit copies 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 21st 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.

3. Respondents and their successors and assigns shall comply with the following undertakings set forth in the Offer:

a. The National Futures Association (“NFA”) shall be appointed as Monitor (“Monitor”) to effect, pursuant to these undertakings, disgorgement payment by Respondents and distribution of such disgorgement payment to Respondents’ customers.

b. Respondents jointly and severally shall pay disgorgement in the amount of one hundred thousand dollars (\$100,000), within ten (10) days of the date of entry of this Order. Respondents shall make their disgorgement payment in the name “Gage’s Fertilizer Settlement Fund” and shall send such disgorgement payment by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier’s, or bank money order, to Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under cover letter that identifies the Respondents and the name and docket number of the proceeding. Respondents shall simultaneously submit copies 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 21st 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.

c. The NFA shall oversee Respondents’ disgorgement payment as set forth in these undertakings, and the NFA shall have discretion to determine the timing and manner for distribution of this disgorgement payment in an equitable fashion to customers of Gage’s Fertilizer; however, entities related to Gage’s Fertilizer and/or Gage (including, but not limited to, Brad Gage; Scott Gage; Gruco Acres, LLC; Luco Acres, LLC; Merco Acres, LLC; Gage Farms, Inc.; and Wayco Acres, LLC) that were charged brokerage fees for options transactions conducted on their behalves are not eligible to receive any portion of these funds. In the event that the amount of funds held by the Monitor pursuant to these undertakings is of a *de minimis* nature, such that the Monitor determines that the administrative costs of the making of a distribution are impractical, the Monitor, in its discretion, may treat such amount as a civil monetary penalty payment, which the

Monitor shall forward to the Commission following the instructions for payment of a civil monetary penalty set forth above.

d. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, the Monitor shall not be liable for any action or inaction arising from its appointment as Monitor, other than actions involving fraud.

e. Respondents shall distribute a copy of this Order to all existing and subsequent employees, principals, and officers and have each employee, principal, and officer sign a statement affirming that he/she has read and reviewed this Order.

f. Neither Respondents nor any of their agents or employees under their 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 factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) rights to take legal positions in other proceedings to which the Commission is not a party. Respondents shall undertake all steps necessary to ensure that all of their agents and employees under their authority or control understand and comply with this agreement.

g. Respondents shall cooperate fully with respect to any further investigation or legal action brought by the Commission against any other entities or individuals with respect to the activities set forth in this Order.

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

By the Commission.



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

Dated: July 22, 2010