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UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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Office of  
Proceedings  
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In the Matter of

: CFTC Docket No. 08-11

Alvin Perez,

:  
: Respondent.  
:  
:-----X

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

**I.**

The Commodity Futures Trading Commission ("Commission") has reason to believe that Alvin Perez (the "Respondent") has violated Section 9(f)(1) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §13(f)(1) (2002), and Commission Regulation ("Regulation") 1.59(d)(1)(ii), 17 C.F.R. § 1.59(d)(1)(ii) (2007). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether the Respondent 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 these administrative proceedings, the Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission accepts. Without admitting or denying the findings herein, the Respondent acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act, As Amended, Making Findings And Imposing Sanctions (the "Order").<sup>1</sup>

<sup>1</sup> The Respondent consents to the use of the findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, the Respondent 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 a proceeding in bankruptcy or to enforce the terms of this Order. Nor does the Respondent 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.

### III.

The Commission finds the following:

#### A. SUMMARY

From 2004 until 2006 (the “Relevant Period”), the Respondent, a former employee of the New York Mercantile Exchange (the “NYMEX”), obtained material, nonpublic information through special access related to the performance of his official duties at the NYMEX and then willfully and knowingly disclosed that information to certain NYMEX brokers in violation of Section 9(f)(1) of the Act and Regulation 1.59(d)(1)(ii).

The Commission considered the Respondent’s cooperation with the Commission’s Division of Enforcement (“DOE”) and law enforcement personnel during the investigation of this matter in its decision to accept the Respondent’s Offer. Specifically, the Respondent voluntarily disclosed evidence relating to the disclosure of material, nonpublic information and continued to cooperate with the DOE’s and law enforcement’s investigations thereafter.

#### B. SETTLING RESPONDENT

**Alvin Perez** currently resides in Staten Island, New York. While not currently employed by NYMEX, during the Relevant Period he was a clerk in NYMEX’s compliance department. Respondent has never been registered with the Commission in any capacity.

#### C. FACTS

During the Relevant Period, the Respondent was employed as a clerk in the compliance department of the NYMEX, and in that position, the Respondent obtained material, nonpublic information related to investigations of, and proposed regulatory actions against, certain NYMEX floor brokers. The Respondent willfully and knowingly disclosed that material, nonpublic information to certain NYMEX floor brokers. Further, the disclosure of such information was for purposes inconsistent with the performance of the Respondent’s official duties in the compliance department.

#### D. LEGAL DISCUSSION

##### Violation of Section 9(f)(1) of the Act and Regulation 1.59(d)(1)(ii)

Section 9(f) of the Act provides, in pertinent part, that it “shall be a felony for any person who is an employee ... of a board of trade,<sup>2</sup> ... in violation of a regulation issued by the Commission, ... willfully and knowingly to disclose for any purpose inconsistent with the performance of such person’s official duties as an employee ..., any material nonpublic information obtained through special access related to the performance of such duties.”

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<sup>2</sup> Regulation 1.3(a) defines a Board of Trade as any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling any commodity or receiving the same for sale on consignment.

Regulation 1.59(d)(1)(ii) provides, in pertinent part, that “no [self regulatory organization (“SRO”)]<sup>3</sup> employee ... shall ... disclose for any purpose inconsistent with the performance of such person’s official duties as an employee ... any material, non-public information obtained through special access related to the performance of such duties.” Regulation 1.59(a)(5) further provides that material information includes, but is not limited to, information relating to the “regulatory actions or proposed regulatory actions of a [SRO].”

The Respondent, as an employee of NYMEX, which is both a board of trade and a SRO, obtained nonpublic, material information, i.e., information related to investigations of, and proposed regulatory actions against, certain NYMEX floor brokers, and then willfully and knowingly disclosed that confidential information to certain floor brokers for purposes inconsistent with the performance of his official duties. Indeed, the release of information from the NYMEX compliance department in order to alert floor brokers of ongoing confidential investigations was not only inconsistent, but contrary to his official duties. Through this conduct, the Respondent violated both Section 9(f)(1) of the Act and Regulation 1.59(d)(1)(ii).

#### IV.

#### OFFER OF SETTLEMENT

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

- A. Admits the jurisdiction of the Commission with respect to the matters set forth in this Order;
- B. Acknowledges service of this Order;
- C. Waives: (1) the filing and service of a complaint and notice of hearing; (2) a hearing; (3) all post-hearing procedures; (4) judicial review by any court; (5) any and all objections to the participation by any member of the Commission's staff in consideration of the Offer; (6) 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 the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§148.1-30 (2007), relating to or arising from this proceeding; (7) any and all claims that he may possess under the Small Business Regulatory Enforcement Act, Pub. L. 104-121, Subtitle B, Section 223, 110 Stat. 862-63 (March 29, 1996), relating to or arising from this proceeding; and (8) any claim of Double Jeopardy based upon institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

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<sup>3</sup> Regulation 1.3(ee) defines an SRO to include a contract market. A contract market is defined in Regulation 1.3(h) to include a board of trade designated by the Commission as a contract market under the Act.

- D. Stipulates that the record basis upon which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented; and
- E. Consents solely on the basis of the Offer, to the entry of this Order that:
1. makes findings of fact and conclusions of law that Respondent violated Section 9(f)(1) of the Act and Regulation 1.59(d)(1)(ii);
  2. orders Respondent to cease and desist from violating Section 9(f)(1) of the Act and Regulation 1.59(d)(1)(ii);
  3. permanently prohibits Respondent from directly or indirectly: (a) 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) (2002); (b) entering into any commodity interest transactions for his own personal account, for any account in which he has a direct or indirect interest and/or having any commodity interests traded on his behalf; (c) engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise; and (d) soliciting, receiving, or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract; and
  4. orders Respondent to comply with the undertakings consented to in his Offer and set forth in this Order.

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

V.

**FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that Respondent violated Section 9(f)(1) of the Act, 7 U.S.C. §13(f)(1) (2002), and Regulation 1.59(d)(1)(ii), 17 C.F.R. § 1.59(d)(1)(ii) (2007).

VI.

**ORDER**

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

1. The Respondent shall cease and desist from violations of Section 9(f)(1) of the Act and Regulation 1.59(d)(1)(ii);
2. The Respondent is permanently prohibited from directly or indirectly: (a) 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) (2002); (b) entering into any commodity interest transactions for his own

personal account, for any account in which he has a direct or indirect interest and/or having any commodity interests traded on his behalf; (c) engaging in, controlling or directing the trading for any commodity interest account for or on behalf of any other person or entity, whether by power of attorney or otherwise; and (d) soliciting, receiving, or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract;

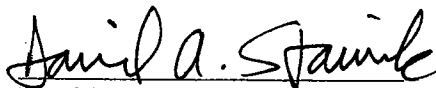
3. The Respondent acknowledges that failure to comply with this Order shall constitute a violation of the Order and may subject him to administrative or injunctive proceedings, pursuant to the Act.

4. Respondent is directed to comply with the following undertakings set forth in his Offer:

- a. Respondent shall never act as a principal, agent or any other officer or employee of any board of trade, registered futures association, self-regulatory organization, or person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14 (a)(9), 17 C.F.R. § 4.14(a)(9);
- b. Respondent shall never apply for registration or seek exemption from registration with the Commission in any capacity and shall never engage in activity requiring 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); and
- c. Neither the Respondent nor any of his agents, employees 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 a factual basis; provided, however, that nothing in this provision affects the Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. The Respondent shall take all steps necessary to ensure that his agents, employees and representatives, if any, understand and comply with this agreement.

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

By the Commission



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

Dated: August 26, 2008