UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. MICHAEL THOMAS NOWAK, and GREGG FRANCIS SMITH, Defendants.	Case No. 19-cv-6163 JURY TRIAL DEMANDED

COMPLAINT FOR INJUNCTIVE RELIEF, CIVIL MONETARY PENALTIES, AND OTHER EQUITABLE RELIEF

Plaintiff Commodity Futures Trading Commission (the "CFTC" or "Commission") alleges as follows:

I. SUMMARY

1. From at least 2008 through at least 2015 (the "Relevant Period"), Defendants Michael Thomas Nowak ("Nowak") and Gregg Francis Smith ("Smith") (collectively, "Defendants"), who were traders at a major U.S. financial institution ("Bank A"), engaged in manipulative and deceptive acts and practices in the precious metals futures markets, which involved Defendants placing orders for and trading precious metals futures contracts on a registered entity. Defendants repeatedly engaged in these manipulative or deceptive acts and practices by "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution). In placing thousands of orders with the intention to cancel them, Defendants sent false signals of increased buying or selling interest designed to trick market participants into

executing the orders Defendants wanted filled. Defendants engaged in this conduct with the intent to manipulate market prices and create artificial prices, and thereby enable their orders to be filled sooner, at a better price, or in larger quantities than they otherwise would.

2. By virtue of this conduct, as further alleged herein, throughout the Relevant Period, Defendants engaged in acts and practices that violated Section 9(a)(2) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 13(a)(2)(2012).

3. By virtue of this conduct, as further alleged herein, from July 16, 2011, through at least 2015, Defendants engaged in acts and practices that violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

4. By virtue of this conduct, as further alleged herein, from August 15, 2011, through at least 2015, Defendants engaged in acts and practices that violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Commission Regulation ("Regulation") 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2019).

5. The Commission brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), to enjoin Defendants' unlawful acts and practices and to compel Defendants' compliance with the Act and Regulations. In addition, the Commission seeks civil monetary penalties and other equitable relief, including but not limited to disgorgement and trading and registration prohibitions, as the Court deems necessary and appropriate.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under 28 U.S.C. § 1331 (2012) (federal question jurisdiction) and 28 U.S.C. § 1345 (2012) (district courts have original jurisdiction over civil actions commenced by the United States or by any agency expressly authorized to sue by Act of Congress). Section 6c(a) of the Act, 7 U.S.C. § 13a-1(a) (2012), authorizes the Commission to seek injunctive relief in any proper district court of the United

States against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order thereunder.

7. Venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e), because Defendants transact business in the Northern District of Illinois, and the acts and practices in violation of the Act and Regulations have occurred within this District.

III. PARTIES

8. Plaintiff **Commodity Futures Trading Commission** is the independent federal regulatory agency charged by Congress with the administration and enforcement of the Act and Regulations promulgated thereunder. One of its core responsibilities is to protect the public interest by deterring and preventing disruptions to market integrity. *See* 7 U.S.C. § 5(b) (2012).

9. Defendant **Michael Thomas Nowak** is a resident of New Jersey. Nowak has been employed by Bank A since approximately 1996 and currently serves as managing director and Global Head of Precious and Base Metals Trading. During the Relevant Period, Nowak was a trader and supervisor on Bank A's precious metals desk and worked out of Bank A's New York and London offices. Between 2015 and 2018, Nowak was listed with the National Futures Association as a principal of an affiliate of Bank A.

10. Defendant **Gregg Francis Smith** is a resident of New York. Smith has been employed by Bank A since 2008, when his previous employer ("Bank B") was acquired by Bank A. During the Relevant Period, and continuing until the present, Smith has been an executive director and trader on Bank A's precious metals desk, working out of Bank A's New York City offices. Prior to the Relevant Period, Smith was registered with the CFTC as a floor broker.

IV. OTHER RELEVANT ENTITIES

11. **Commodity Exchange, Inc.** ("COMEX") is a commodity exchange registered with the CFTC as a designated contract market under Section 5 of the Act, 7 U.S.C. § 7 (2012), and defined as a "registered entity" under Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012). COMEX lists for trading gold futures, silver futures, and other precious metals contracts. COMEX's headquarters is located in New York, New York.

12. **New York Mercantile Exchange** ("NYMEX") is a commodity exchange registered with the CFTC as a designated contract market under 7 U.S.C. § 7, and defined as a "registered entity" under 7 U.S.C. § 1a(40). NYMEX lists for trading platinum futures, palladium futures, and other precious metals contracts. NYMEX's headquarters is located in New York, New York.

13. **CME Group Inc.** ("CME") is the parent company of COMEX and NYMEX. CME's headquarters is located in Chicago, Illinois. CME operates an electronic trading platform known as Globex, an open-access marketplace that allows market participants ("traders") to view the aggregated book of visible orders and prices for futures contracts and enter their own orders to buy or sell futures contracts. Through pre-defined sets of trade matching rules, Globex enables the execution of buy orders opposite sell orders for specific quantities at specific prices.

V. LEGAL BACKGROUND

A. Spoofing

14. Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012), provides that "[i]t shall be unlawful for any person to engage in trading, practice, or conduct on or subject to the rules of a registered entity that . . . is, is of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution)."

B. Manipulative or Deceptive Devices

15. Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), provides that "[i]t shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate."

16. Regulation 180.1, 17 C.F.R. § 180.1(a) (2019), provides that "[i]t shall be unlawful for any person, directly or indirectly, in connection with any swap, or contract of sale of any commodity in interstate commerce, or contract for future delivery on or subject to the rules of any registered entity, to intentionally or recklessly: (1) [u]se or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud; . . . [or] (3) [e]ngage, or attempt to engage, in any act, practice, or course of business, which operates or would operate as a fraud or deceit upon any person."

C. Attempted Price Manipulation

17. Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012), provides that it is unlawful for "[a]ny person to . . . attempt to manipulate the price of any commodity . . . for future delivery on or subject to the rules of any registered entity."

VI. MARKET AND PRODUCT BACKGROUND

A. Fundamentals of Futures Markets and Trading

18. A futures contract is an agreement to buy or sell a commodity for delivery or cash settlement in the future at a specified price. A futures contract traded on an exchange has standard, non-negotiable contract specifications, such as the quality, quantity, and physical delivery time and location for the given product. Futures contracts are used to assume or shift

price risk, and may be satisfied by cash settlement, delivery, or offset. Futures contracts are commonly used to hedge risks or to speculate on the price of commodities.

19. The Globex electronic trading platform allows market participants to trade futures and options, including precious metals futures listed on COMEX and NYMEX, from virtually anywhere in the world, nearly twenty-four hours a day between 5:00 P.M. Central Time on Sunday evening and 4:00 P.M. Central Time on Friday afternoon. (Henceforth, all times described in this Complaint are expressed in Central Time, unless otherwise stated.)

20. An "order," when entered for futures trading through Globex, is an electronic request submitted to the exchange to buy (that is, "bid") or sell (that is, "offer" or "ask") one or more of a specified futures contract. An order may be for a quantity of one or more contracts, or "lots." A trader's order is "filled" or "executed" when it is matched on Globex with an "opposite" order (an order to buy, if the trader is selling; or vice versa) for the same price specified by the trader or a price more favorable to the trader.

21. When a bid or offer is submitted through Globex, it becomes part of the list of orders reflected in the "order book" for a particular futures contract. Traders are able to see the "visible" portion of the order book, which consists of the aggregate quantity of orders and the aggregate quantity of lots sought in those orders on each price level for up to ten price levels on the buy side and for up to ten price levels on the sell side for all market participants. This visible information about aggregate buying and selling interest in the market at different price levels (also known as "market depth") includes only the total number of orders and the total number of lots comprising those orders at various price levels. The identities of the traders who placed the orders and the number of lots sought in any particular order are not visible to market participants.

22. For example, on the buy side there may be lots available (ordered from the highest price a market participant is willing to buy to the tenth-highest) at price levels of 100, 99, 98, 97, and so forth until reaching the tenth-highest price level at 91; and on the sell side there may be lots available (ordered from the lowest price a market participant is willing to sell to the tenth-lowest) at price levels of 101, 102, 103, 104, and so forth until reaching the tenth-lowest price level at 110. The "best-bid" level, 100, is the highest price at which any trader is willing to buy; and the "best-ask" level, 101, is the lowest price at which any trader is willing to sell. The "bid-ask spread" is the difference between the best-ask and best-bid price levels; accordingly, the bid-ask spread in the example above is 1 (101 less 100).

23. To illustrate, the chart below shows an example of how the first five levels of the visible order book in the Gold futures contract at a hypothetical moment in time can be visualized as a price ladder:

Price	Buy Orders	Buy Lots	Sell Orders	Sell Lots
105			17	18
104			21	22
103			21	23
102			12	12
101			**6**	**11**
100	**4**	**4**		
99	13	13		
98	17	23		
97	26	36		
96	17	25		
TOTALS:	**77**	**101**	**77**	**86**

24. An "aggressive" order is an order that crosses, or aggresses, the bid-ask spread. An aggressive buy order is a bid placed at the best-ask price or higher, i.e., an order to buy at a price at which at least one other trader is currently willing to sell. Using the example above, with

a best-bid of 100 and best-ask of 101, an aggressive buy order would be placed at 101 or higher. An aggressive sell order is an offer placed at the best-bid price or lower, i.e., an order to sell at a price at which at least one other trader is currently willing to buy. Continuing with the example above, an aggressive sell order would be placed at 100 or lower.

25. A "resting" order, on the other hand, does not cross the bid-ask spread. A resting buy order is a bid placed at the best-bid price or lower, i.e., an order to buy at a price that is lower than the price that other traders are currently willing to sell. Using the example above, a resting buy order would be placed at 100 or lower. A resting sell order is placed at the best-ask price or higher, i.e., an order to sell at a price that is higher than the price that other traders are currently willing to buy. Continuing with the example, a resting sell order would be placed at 101 or higher.

26. An "iceberg" order is a type of order that traders can place through Globex on exchanges including COMEX and NYMEX. In an iceberg order, the trader divides the total number of lots the trader wants to buy or sell into two portions: one portion is a pre-set quantity that is visible to other market participants in the visible order book, and the other portion is the remaining part of the order, which is not visible to other market participants (i.e., a "hidden" quantity). Whenever the visible portion of such an order is filled, the same, pre-set quantity of the remaining, hidden portion automatically becomes visible at the back of the order queue; this process repeats until the entire order is either executed or canceled. Thus, for example, if the trader places a fifty-lot resting iceberg order to buy at price level 100, with a visible portion showing ten lots, only ten lots of the fifty-lot order will be part of the visible order book. The remaining forty lots will become visible, in ten-lot increments, when the preceding ten-lot portion of the iceberg order is executed.

27. Traders using Globex during trading sessions when the exchange is open may "cancel" their orders before execution. Order "cancellation" is the termination of a pending order before that order is fully filled.

28. CME employs a matching algorithm to match bids and offers for execution on Globex. In certain markets, like the precious metals futures markets on COMEX and NYMEX at issue here, the matching algorithm applies a First-In-First-Out ("FIFO") priority-in-time method to orders entered at the same price level of the order book. The first orders placed at a price level are the first to be executed. As a general matter, if there are multiple buy orders at a price level, the orders will be filled in the order they were placed. Orders first-in-line to be filled at a given price level are said to be at the "front of the queue," and orders last-to-be-filled are said to be at the "back of the queue." As a general matter, the orders at the back of the queue will be filled only if all of the other orders at the same price level have already been filled.

B. Fundamentals of the Precious Metals Futures Market

29. Like all commodity futures markets, the market for precious metals futures enables producers and users of precious metals to hedge the price of those commodities. For market participants generally, the precious metals futures market serves as a principal means for investment in precious metals—gold, silver, platinum, and palladium—which are commonly used by investors to diversify risk and to hedge against inflation, deflation, or currency devaluation.

30. The gold futures contract listed on COMEX ("Gold Futures" contract) is regularly traded on Globex for delivery during the current calendar month, the next two calendar months, any February, April, August, and October falling within a 23-month period, and any June and December falling within a 72-month period beginning with the current month. One lot of the Gold Futures contract is equal to 100 troy ounces.

31. The silver futures contract listed on COMEX ("Silver Futures" contract) is regularly traded on Globex for delivery during the current calendar month, the next two calendar months, any January, March, May, and September falling within a 23-month period, and any July and December falling within a 60-month period beginning with the current month. One lot of the Silver Futures contract is equal to 5,000 troy ounces.

32. The platinum futures contract listed on NYMEX ("Platinum Futures" contract) is regularly traded on Globex for delivery during the current calendar month, the next two calendar months, and any March, June, September, and December within a 15-month period beginning with the current month. One lot of the Platinum Futures contract is equal to 50 troy ounces.

33. The palladium futures contract listed on NYMEX ("Palladium Futures" contract) is regularly traded on Globex for delivery during the current calendar month, the next two calendar months, and any March, June, September, and December falling within a 15-month period beginning with the current month. One lot of the Palladium Futures contract is equal to 100 troy ounces.

C. Examples of Spoofing Violations in Futures Markets

34. In general, in the futures markets, when there is more interest in buying a particular contract than there is in selling, prices will rise, all else equal; conversely, when there is more interest to sell than to buy, prices will fall, all else equal. This general concept holds true in the precious metals futures markets at issue here.

35. Many market participants incorporate supply and demand concepts into their trading decisions, relying on the number of bids and offers at various price levels in the visible order book to determine whether there is generally more interest to buy or to sell in the market at any given time, and thus whether a corresponding price change is likely. Market participants consider, for example, liquidity and market depth—i.e., the volume of lots and orders that make

up bids and offers in the visible order book, in total and at each price level of the order book. These market participants also consider "order book balance" or "order book pressure"—i.e., the ratio of lots and orders on the bid side of the market (or interest to buy) to the contracts and orders on the offer side of the market (or interest to sell), in the visible order book, in total and at each price level of the order book.

36. For instance, if the total number of lots and/or orders on the bid (buy) side significantly outweighs the total number of lots and/or orders on the offer (sell) side, market participants may reasonably believe that there is more interest to buy than to sell, and thus infer that a price increase is likely. These market participants may then trade accordingly, and some may attempt to buy lots before the expected price increase. In such a case, these market participants would place aggressive orders to buy (i.e., at a higher price than the currently resting buy orders in the market), making execution of resting sell orders more likely.

37. In considering order book balance, many of these market participants give greater weight to orders that are closer to the best-bid or best-ask price in the visible order book, and in particular to orders that are at the best-bid and best-ask prices.

38. Many market participants use automated trading systems that analyze the market for these types of imbalances in the order book and use that information to make trading decisions.

39. Spoofing (bidding or offering with the intent to cancel the bid or offer before execution) and manipulative or deceptive trading strategies that incorporate spoofing seek to take advantage of these market fundamentals and market participants' reactions to them. This might be done, for example, by placing one or more relatively large spoof orders, or a series of spoof orders, on the buy (or sell) side, which the trader intends to cancel before execution. In this

example, the trader would place these spoof buy orders to create an order book imbalance that would convey a false appearance that there is more interest to buy than to sell in the market, and thus trick other market participants into believing that a corresponding price increase is likely. The trader would do this with the intent to manipulate market prices and deceive other market participants into trading at a time, price, or quantity they otherwise would not have, in a way that benefits the trader. For example, in anticipation of this spoofing strategy, the trader may place one or more resting orders (which the trader intends to execute) on the sell side of the market, anticipating and intending that the trader's spoof orders on the buy side will deceive other market participants into placing aggressive orders to buy, thus moving the price and allowing the trader's orders to sell (which the trader intends to execute) to be executed sooner, at a better price, or in larger quantities than they otherwise would.

VII. DEFENDANTS' MANIPULATIVE AND DECEPTIVE SCHEME

40. During the Relevant Period, Defendants engaged in a manipulative and deceptive scheme that consisted of spoofing the precious metals futures market with the intent to manipulate market prices to benefit their positions.

A. Defendants' Spoofing Scheme

41. Defendants' spoofing conduct followed a general pattern. A Defendant would place a relatively small resting order for precious metals futures (sometimes an iceberg order) that he desired to execute ("Genuine Order"). Before or after entering a Genuine Order, the Defendant would, on the opposite side of the market, place a non-iceberg, relatively large resting order that he intended to cancel before execution ("Spoof Order"), or alternatively would rapidly place a series of non-iceberg resting orders that he intended to cancel before execution ("Layered Spoof Orders"). Frequently, a series of Layered Spoof Orders would include orders placed at two or more distinct price levels, and each order in the series was placed for the same number of

lots. The Defendant's Spoof Order or some or all of his Layered Spoof Orders would be active on the market at the same time as the Genuine Order. The Defendant's Spoof Order or total Layered Spoof Orders would be for a greater number of lots than the visible quantity of his Genuine Order on the opposite side of the market, and in many instances would effect a change to the order book balance at the applicable number of price levels. Finally, Defendants would typically cancel their Spoof Orders within a few seconds of placement, and would typically cancel the highest bids or lowest offers placed in a given series of Layered Spoof Orders within a few seconds after placing them.

42. A Defendant's goal in spoofing through this pattern of trading was to manipulate market prices so that all or part of his Genuine Order would be filled. When a Defendant was successful in executing his Genuine Order, he would typically cancel his Spoof Order or his Layered Spoof Orders (particularly the Layered Spoof Orders that he placed closest to the best-bid or best-ask in the order book) quickly after his Genuine Order was filled.

43. The following is a simplified explanation of how the scheme was intended to work, using a hypothetical example of a Genuine Order on the sell side. A Defendant would enter a Spoof Order on the buy side with the intent to manipulate market prices so that the Defendant's Genuine Order that was resting on the sell side would be executed. Specifically, the Defendant's large Spoof Order to buy would result in an increase in demand in the order book, which would be visible to other market participants, impacting their trading decisions. The Defendant intended that this Spoof Order would cause other market participants to place aggressive orders to buy (i.e., at a higher price than the currently resting bids in the market), making it more likely that the price would move so that the Defendant's Genuine Order would be executed at the price where it was resting.

44. When Defendants' Genuine Orders were buy orders, their Spoof Orders or Layered Spoof Orders were orders to sell. In placing Spoof Orders or Layered Spoof Orders to sell, Defendants intended to manipulate market prices so that their Genuine Orders to buy would be executed at the prices where they were resting. This was done by sending market participants a false signal of greater supply to create the impression that the price would likely decline and trick market participants into transacting on Defendants' Genuine Orders to buy at their resting price.

45. Conversely, when Defendants' Genuine Orders were sell orders, their Spoof Orders or Layered Spoof Orders were orders to buy. In placing Spoof Orders or Layered Spoof Orders to buy, Defendants intended to manipulate market prices so that the Genuine Orders to sell would be executed at the price where they were resting. This was done by sending market participants a false signal of greater demand to create the impression that the price would likely rise and trick market participants into transacting on Defendants' Genuine Orders to sell at their resting price.

46. In placing Spoof Orders and Layered Spoof Orders, Defendants falsely represented to market participants that they actually wanted to buy or sell the number of lots in Defendants' orders when, in reality, they did not want to do so.

47. Defendants entered their Spoof Orders and Layered Spoof Orders to create a false impression of buying or selling interest or order book balance and result in misinformation, with the intent to manipulate market prices and trick market participants into trading based on Defendants' spoofing. Defendants knew that their Spoof Orders and Layered Spoof Orders would appear in the order book and that traders often considered information about order book

balance when making their trading decisions. Thus, Defendants intended that their Spoof Orders and Layered Spoof Orders would mislead other market participants.

48. Defendants' spoofing scheme included the placement of thousands of Spoof Orders and Layered Spoof Orders with the intent to manipulate market prices so that their Genuine Orders would be executed at their resting price during the Relevant Period.

B. Spoofing by Nowak

49. Nowak supervised Bank A's precious metals desk in New York during the Relevant Period, supervising Smith and other traders.

50. During the Relevant Period, Nowak spoofed in the precious metals futures markets, typically by placing Layered Spoof Orders.

51. Nowak was also aware that other Bank A precious metals traders, including Smith, were spoofing as well.

52. Nowak placed thousands of Spoof Orders or Layered Spoof Orders during the Relevant Period, which at the time of placement he intended to cancel before execution and intended to manipulate market prices so that his Genuine Orders would be executed at their resting price, including, by way of example, on the following occasions:

1. *May 6, 2013: Nowak Spoofs Gold Futures*

53. On May 6, 2013, at 9:01:13.122 a.m., Nowak placed a Genuine Order to buy five lots of the Gold Futures contract with June 2013 expiry at a price of $1,465.90 per troy ounce, which was the second-best bid (i.e., the second-highest bid). Approximately 1.3 seconds later, Nowak began entering Layered Spoof Orders on the sell side of the market with the intent to manipulate market prices so that his Genuine Order would be executed at its resting price. Beginning at 9:01:14.497, Nowak began placing a series of offers at decreasing prices. In approximately 2.5 seconds (between 9:01:14.497 and 9:01:16.903), Nowak placed twelve

distinct Layered Spoof Orders, each to sell five lots of Gold Futures. Nowak placed these orders at the following prices, in sequence: $1,466.70 (twice), $1,466.60, $1,466.50, $1,466.40, $1,466.30 (three times), $1,466.20 (twice), and $1,466.10 (twice). At 9:01:17.017—about 100 milliseconds after Nowak had placed his twelfth Layered Spoof Order to sell—his five-lot Genuine Order to buy was fully filled. Over the next 230 milliseconds, Nowak placed two additional offers at a price of $1,466.00, which was at the best-ask level, and was one tick higher than his just-filled Genuine Order.

54. Shortly thereafter, Nowak began canceling his offers. At 9:01:17.981, Nowak canceled his two five-lot orders with the lowest prices ($1,466.00). Over the next six seconds, Nowak canceled his twelve Layered Spoof Orders, starting with the lowest-priced offers and moving towards the highest-priced offers.

55. In summary, Nowak placed one bid to buy five lots, successfully purchasing all five lots after that bid had rested in the market for approximately 3.9 seconds; and he placed fourteen offers to sell a total of seventy lots, which he intended to cancel, and which he did cancel without any lots being filled. At 9:01:17.017, just before his five-lot Genuine Order to buy was filled, Nowak had twelve active Layered Spoof Orders to sell five lots each—a twelve-to-one ratio of offers to bids.

56. At 9:01:17.017, the sell-side market depth on the lowest eight price levels was one hundred four lots, of which Nowak had offered sixty, and the buy-side market depth was fifty-three lots at the eight highest price levels, including Nowak's bid for five lots. In other words, within eight price levels from the best bid and offer, Nowak's orders represented 58% of the sell-side and just 9% of the buy-side; all traders in the market besides Nowak had 9% more bids than offers (forty-eight lots bid against forty-four lots offered); and the entire market,

including Nowak's orders, had 96% more offers than bids (one hundred four lots offered against fifty-three lots bid).

2. *October 7, 2013: Nowak Spoofs Gold Futures*

57. On October 7, 2013, at 7:34:45.805 a.m., Nowak placed a Genuine Order to sell five lots of the Gold Futures contract with December 2013 expiry at a price of $1,318.70 per troy ounce, which was the second-best offer (i.e., the second-lowest offer). Approximately 1.9 seconds later, Nowak began entering Layered Spoof Orders on the buy side of the market with the intent to manipulate market prices so that his Genuine Order would be executed at its resting price. Beginning at 7:34:47.758, Nowak began placing a series of bids at increasing prices. In approximately 2.8 seconds (between 7:34:47.758 and 7:34:50.523), Nowak entered fourteen distinct Layered Spoof Orders, each to buy five lots of Gold Futures. Nowak placed these orders at the following prices, in sequence: $1,318.00, $1,318.10, $1,318.20 (three times), $1,318.30 (twice), $1,318.40 (three times), and $1,318.50 (four times). Less than one millisecond after Nowak had placed his fourteenth Layered Spoof Order to buy, his five-lot Genuine Order to sell was fully filled.

58. About 900 milliseconds later, Nowak began canceling his resting bids. At 7:34:51.429, Nowak canceled his four highest-priced bids. Over the next several seconds, Nowak canceled each of his ten remaining Layered Spoof Orders, starting with the highest-priced bids and moving towards the lowest-priced bids.

59. In summary, Nowak placed one offer to sell five lots, successfully selling all five lots after that offer had rested in the market for 4.7 seconds; and he placed fourteen orders to buy a total of seventy lots, which he intended to cancel, and which he did cancel without any lots being filled. At 7:34:50.523, just before his five-lot Genuine Order to sell was filled, Nowak had

fourteen active Layered Spoof Orders to buy five lots each—a fourteen-to-one ratio of bids to offers. Each of Nowak's highest-priced bids, at $1,318.50, was canceled less than 1.6 seconds after being placed.

60. At 7:34:50.523, the buy-side market depth at the highest six price levels was one hundred thirty-six lots, of which Nowak had bid seventy, and the sell-side market depth at the six lowest price levels was fifty-three lots, including Nowak's five-lot offer. In other words, within six price levels from the best bid and offer, Nowak's orders represented 51% of the buy-side and just 9% of the sell-side; all traders in the market besides Nowak had 38% more bids than offers (sixty-six lots bid against forty-eight lots offered); and the entire market, including Nowak's orders, had 157% more bids than offers (one hundred thirty-six lots bid against fifty-three lots offered).

3. *March 3, 2014: Nowak Spoofs Gold Futures*

61. On March 3, 2014, at 8:02:17.997 a.m., Nowak placed a Genuine Order to sell five lots of the Gold Futures contract with April 2014 expiry at a price of $1,348.20 per troy ounce, which was the best-ask price. Approximately 1.3 seconds later, Nowak began entering Layered Spoof Orders on the buy side of the market with the intent to manipulate market prices so that his Genuine Order would be executed at its resting price. Beginning at 8:02:19.360, Nowak began placing a series of bids at increasing prices. In approximately 2.2 seconds (between 8:02:19.360 and 8:02:21.529), Nowak placed six distinct Layered Spoof Orders, each to buy five lots of Gold Futures. Nowak placed these bids at the following prices, in sequence: $1,347.90, $1,348.00, and $1,348.10 (four times). Less than one millisecond after Nowak had placed his sixth Layered Spoof Order to buy, his five-lot Genuine Order to sell was fully filled.

62. About 700 milliseconds later, Nowak began canceling his resting bids. At 8:02:22.257, Nowak canceled his four highest-priced bids. Over the next three seconds, he canceled his two remaining Layered Spoof Orders, starting with the higher-priced bid.

63. In summary, Nowak placed one offer to sell five lots, successfully selling all five lots after that offer had rested in the market for approximately 3.5 seconds; and he placed six orders to buy a total of thirty lots, which he intended to cancel, and which he did cancel without any lots being filled. At 8:02:21.529, just before his five-lot Genuine Order to sell was filled, Nowak had six active Layered Spoof Orders to buy five lots each—a six-to-one ratio of bids to offers. The last of Nowak's highest-priced bids, entered at $1,348.10, was canceled less than one second after being placed.

64. At 8:02:21.529, the buy-side market depth at the highest three price levels was sixty-five lots, of which Nowak had bid thirty, and the sell-side market depth at the three lowest price levels was thirty-six lots, including Nowak's five-lot offer. In other words, within three price levels from the best bid and offer, Nowak's orders represented 46% of the buy-side and just 14% of the sell-side; all traders in the market besides Nowak had 13% more bids than offers (thirty-five lots bid against thirty-one lots offered); and the entire market, including Nowak's orders, had 81% more bids than offers (sixty-five lots bid against thirty-six lots offered).

C. Spoofing by Smith

65. Throughout the Relevant Period, Smith was employed as a precious metals trader at Bank A.

66. During the Relevant Period, Smith spoofed in the precious metals futures markets, typically by placing Layered Spoof Orders.

67. Smith taught other traders at Bank A and Bank B how to spoof using Layered Spoof Orders.

68. Smith explained to one trader at Bank A that placing spoof orders of a sufficient size would enable him to move the market, and instructed him to "show size" in placing spoof orders.

69. Smith was known on Bank A and Bank B's precious metals desks for his ability to rapidly place and cancel Layered Spoof Orders.

70. In July 2017, following an investigation, the COMEX Business Conduct Committee found that, in July and August 2013, Smith's Gold Futures trading "employed a trading strategy that consisted of frequently entering and cancelling a series of orders" for improper purposes "rather than to execute trades"—i.e., placing and cancelling Layered Spoof Orders—in violation of exchange rules against "dishonorable or uncommercial conduct" that is "inconsistent with just and equitable principles of trade."

71. Smith placed thousands of Spoof Orders or Layered Spoof Orders during the Relevant Period, which at the time of placement he intended to cancel before execution, and intended to manipulate market prices so that his Genuine Order would be executed at its resting price, including, by way of example, on the following occasions:

1. *January 25, 2013: Smith Spoofs Silver Futures*

72. On January 25, 2013, at 7:55:28.841 a.m., Smith placed a Genuine Order to sell two lots of the Silver Futures contract with March 2013 expiry at a price of $31.590 per troy ounce, which was the best-ask price. Approximately 0.6 seconds later, Smith began entering Layered Spoof Orders on the buy side of the market with the intent to manipulate market prices so that his Genuine Order would be executed at its resting price. Beginning at 7:55:29.473, Smith began placing a series of bids at increasing prices. In approximately half a second (between 7:55:29.473 and 7:55:29.985), Smith entered four distinct Layered Spoof Orders, each

to buy ten lots of Silver Futures. Smith placed these orders at the following prices, in sequence: $31.575, $31.580 (twice), and $31.585. Three milliseconds after Smith had placed his fourth Layered Spoof Order to buy, his two-lot Genuine Order to sell was fully filled. Over the next 318 milliseconds, Smith placed two additional ten-lot bids at $31.585, which was at this time the second-best bid.

73. Shortly thereafter, Smith began canceling his resting bids. At 7:55:30.676, Smith canceled his three ten-lot orders with the highest prices ($31.585). Over the next 600 milliseconds, he canceled his three remaining Layered Spoof Orders, starting with the higher-priced bids.

74. In summary, Smith placed one offer to sell two lots, successfully selling both lots after that offer had rested in the market for approximately 1.1 seconds; and he placed six bids to buy a total of sixty lots, which he intended to cancel, and which he did cancel without any lots being filled. At 7:55:29.987, just before his two-lot Genuine Order to sell was filled, Smith had four active Layered Spoof Orders to buy ten lots each—a twenty-to-one ratio of offers to bids. Each of Smith's highest-priced bids, at $31.585, was canceled less than 0.7 seconds after being placed.

75. At 7:55:29.987, the buy-side market depth at the highest three price levels was fifty-eight lots, of which Smith had bid forty, and the sell-side market depth at the three lowest price levels was eighteen lots, including Smith's two-lot offer. In other words, within three price levels from the best bid and offer, Smith orders represented 69% of the buy-side and just 11% of the sell-side; all traders in the market besides Smith had 13% more bids than offers (eighteen lots bid against sixteen lots offered); and the entire market, including Smith's orders, had 222% more bids than offers (fifty-eight lots bid against eighteen lots offered).

2. *May 23, 2013: Smith Spoofs Gold Futures*

76. On May 23, 2013, at 2:00:22.820 p.m., Smith placed a Genuine Order to buy two lots of the Gold Futures contract with June 2013 expiry at a price of $1,391.00 per troy ounce, which was the best-bid. Over six seconds later, Smith began entering Layered Spoof Orders on the sell side of the market with the intent to manipulate market prices so that his Genuine Order would be executed at its resting price. Beginning at 2:00:29.414, Smith began placing a series of offers at decreasing prices. In approximately 0.8 seconds (between 2:00:29.414 and 2:00:30.229), Smith entered six distinct Layered Spoof Orders, each to sell ten lots of Gold Futures. Smith placed those offers at the following prices, in sequence: $1,391.70, $1,391.40, $1,391.20, and $1,391.10 (three times). At 2:00:30.282 p.m.—about sixty milliseconds after Smith had placed his sixth Layered Spoof Order to sell—one lot of Smith's two-lot bid was filled. One millisecond after that, the other lot of Smith's two-lot bid was filled.

77. About half a second later, at 2:00:30.792, Smith began canceling his resting offers, starting with the lowest-priced offers and moving toward the highest-priced offers. Within 0.7 seconds after his Genuine Order was fully filled, he had canceled four of his six ten-lot Layered Spoof Orders, and canceled the remaining two Layered Spoof Orders in the next 1.2 seconds.

78. In summary, Smith placed one bid to buy two lots, successfully purchasing both lots after that bid had rested in the market for approximately 7.5 seconds; and he placed six offers to sell a total of sixty lots, which he intended to cancel, and which he did cancel without any lots being filled. At 2:00:30.283, just before the second lot of his two-lot Genuine Order to buy was filled, Smith had six active Layered Spoof Orders to sell ten lots each—a sixty-to-one

ratio of offers to bids. Each of Smith's lowest-priced offers, at $1,391.10, was canceled less than 0.9 seconds after being placed.

79. At 2:00:30.283, the sell-side market depth at the seven lowest price levels was one hundred six lots, of which Smith had offered sixty, and the buy-side market depth at the seven highest price levels was forty-one lots, including one remaining lot of Smith's two-lot bid. In other words, within seven price levels from the best bid and offer, Smith's orders represented 57% of the sell-side and just 2% of the buy-side; all traders in the market besides Smith had 15% more offers that bids (forty-six lots offered against forty lots bid); and the entire market, including Smith's orders, had 159% more offers than bids (one hundred six lots offered against forty-one lots bid).

3. *June 11, 2015: Smith Spoofs Gold Futures*

80. On June 11, 2015, at 7:31:25.410 a.m., Smith placed a Genuine Order to sell ten lots of the Gold Futures contract with August 2015 expiry at a price of $1,177.80 per troy ounce, which was the best-ask price. About 0.7 seconds later, Smith began entering Layered Spoof Orders on the buy side of the market with the intent to manipulate market prices so that his Genuine Order would be executed at its resting price. Beginning at 7:31:26.144, Smith began placing a series of bids at increasing prices. In approximately 0.7 seconds (between 7:31:26.144 and 7:31:26.882), Smith entered five distinct Layered Spoof Orders, each to buy ten lots of Gold Futures. Smith placed these orders at the following prices, in sequence: $1,177.50 (twice) and $1,177.60 (three times). About 0.1 seconds after Smith had placed his fifth Layered Spoof Order to buy, his ten-lot Genuine Order to sell was fully filled.

81. About 0.2 seconds later, Smith began canceling his resting bids. At 7:31.27.265, Smith canceled his three highest-priced bids, and at 7:31:27.441, he canceled his two remaining Layered Spoof Orders.

82. In summary, Smith placed one offer to sell ten lots, successfully selling all ten lots after that offer had rested in the market for over 1.5 seconds; and he placed five orders to buy a total of fifty lots, which he intended to cancel, and which he did cancel without any lots being filled. At 7:31:27.003, just before his ten-lot Genuine Order to sell was filled, Smith had five active Layered Spoof Orders to buy ten lots each—a five-to-one ratio of bids to offers. Each of Smith's bids was canceled between approximately 0.4 and 1.3 seconds after being placed.

83. At 7:31:27.003, the buy-side market depth at the highest three price levels was seventy lots, of which Smith had bid fifty, and the sell-side market depth at the three lowest price levels was forty-six lots, including Smith's ten-lot offer. In other words, within three price levels from the best bid and offer, Smith's orders represented 71% of the buy-side and just 22% of the sell-side; all traders in the market besides Smith had 80% more offers than bids (thirty-six lots offered against twenty lots bid); and the entire market, including Smith's orders, had 52% more bids than offers (seventy lots bid against forty-six lots offered).

V. VIOLATIONS OF THE ACT AND REGULATIONS

COUNT I

VIOLATIONS OF SECTION 4c(a)(5)(C) OF THE ACT, 7 U.S.C. § 6c(a)(5)(C) (Disruptive Practices—Spoofing)

84. The allegations set forth in paragraphs 1 to 83 are re-alleged and incorporated herein by reference.

85. By reason of the conduct described above, Defendants engaged in trading, practices, or conduct on or subject to the rules of a registered entity that is, is of the character of,

or is commonly known to the trade as, "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution).

86. In placing each Spoof Order or Layered Spoof Order, Defendants acted with the intent to cancel the bid or offer before execution.

87. By reason of the foregoing, for conduct on or after July 16, 2011, Defendants violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

88. Each Spoof Order or Layered Spoof Order, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of Section 4c(a)(5)(C) of the Act.

COUNT TWO

VIOLATIONS OF SECTION 6(c)(1) OF THE ACT, 7 U.S.C. § 9(1), AND REGULATION 180.1(a)(1) AND (3), 17 C.F.R. § 180.1(a)(1), (3) (Use of a Manipulative and Deceptive Device, Scheme, or Artifice)

89. The allegations set forth in paragraphs 1 to 83 are re-alleged and incorporated herein by reference.

90. By reason of the conduct described above, Defendants, in connection with a contract for future delivery on a registered entity, intentionally or recklessly: (1) used or employed, or attempted to use or employ, manipulative devices, schemes, or artifices to defraud; or (2) engaged, or attempted to engage, in acts, practices, or courses of business, which operated or would have operated as a fraud or deceit upon market participants.

91. By reason of the foregoing, for conduct on or after August 15, 2011, Defendants violated Section 6(c)(1) of the Act, 7 U.S.C. § 9(1) (2012), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2019).

92. In addition, each of Defendants' Spoof Orders and Layered Spoof Orders, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1(a)(1) and (3).

COUNT THREE

VIOLATIONS OF SECTION 9(a)(2) OF THE ACT, 7 U.S.C. § 13(a)(2)
(Attempted Price Manipulation)

93. The allegations set forth in paragraphs 1 to 83 are re-alleged and incorporated herein by reference.

94. By reason of the conduct described above, Defendants attempted to manipulate the price of any commodity for future delivery on or subject to the rules of any registered entity.

95. By reason of the foregoing, Defendants violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2012).

96. In addition, each of Defendants' Spoof Orders and Layered Spoof Orders, including but not limited to those specifically alleged herein, constitutes a separate and distinct violation of 7 U.S.C. § 13(a)(2).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), and pursuant to its own equitable powers:

A. Find that Defendants violated Sections 4c(a)(5)(C), 6(c)(1), and 9(a)(2) of the Act, 7 U.S.C. §§ 6c(a)(5)(C), 9(1), 13(a)(2) (2012), and Regulation 180.1(a)(1) and (3), 17 C.F.R. § 180.1(a)(1), (3) (2019);

B. Enter an order of permanent injunction restraining and enjoining Defendants and any of their affiliates, agents, servants, employees, successors, assigns, attorneys, and persons in active concert with Defendants who receive actual notice of such order by personal service or

otherwise, from engaging in any trading, practice, or conduct on or subject to the rules of a registered entity that is, is of the character, or is commonly known to the trade as "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution) in violation of 7 U.S.C. § 6c(a)(5)(C), from intentionally or recklessly using or employing, or attempting to use or employ, any manipulative devices, contrivances, and artifices to defraud in connection with contracts of sale of commodities for future delivery on or subject to the rules of a registered entity in violation of 7 U.S.C. § 9(1) and 17 C.F.R. § 180.1, and from attempting to manipulate the price of any commodity for future delivery on or subject to the rules of any registered entity in violation of 7 U.S.C. § 13(a)(2);

C. Enter an order permanently enjoining Defendants and any of their affiliates, agents, servants, employees, successors, assigns, attorneys, and persons in active concert with Defendants, from directly or indirectly:

1. Trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012));

2. Entering into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3, 17 C.F.R. § 1.3 (2019)), for their own personal accounts or for any account in which they have a direct or indirect interest;

3. Having any commodity interests traded on their behalf;

4. Controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;

5. Soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;

6. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging 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) (2019); and

7. Acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2019)), agent, or any other officer or employee of any person registered, exempted from registration, or required to be registered with the Commission except as provided for in 17 C.F.R. § 4.14(a)(9);

D. Enter an order directing Defendants, as well as any third-party transferee and/or successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received including, but not limited to, salaries, commissions, loans, fees, revenues, and trading profits derived, directly or indirectly, from acts or practices which constitute violations of the Act and Regulations as described herein, including pre-judgment and post-judgment interest;

E. Enter an order requiring Defendants, as well as any successors thereof, to make full restitution to every person who has sustained losses proximately caused by the violations described herein, including pre-judgment and post-judgment interest;

F. Enter an order directing Defendants to pay civil monetary penalties to be assessed by the Court, in an amount not to exceed the penalty prescribed by Section 6c(d)(1) of the Act, 7 U.S.C. § 13a-1(d)(1) (2012), as adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, tit. VII, § 701, 129 Stat. 584, 599-600, *see* Regulation 143.8, 17 C.F.R. § 143.8 (2019), for each violation of the Act, as described herein;

G. An order requiring Defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (2012); and

H. An order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

Dated: September 16, 2019

Respectfully submitted,

PLAINTIFF COMMODITY FUTURES TRADING COMMISSION

/s/ Jon J. Kramer_____

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