

## MAGISTRATE JUDGE HARJANI

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

PROPEX DERIVATIVES PTY LTD,  
Defendant.

CASE NUMBER:

20CR0039

**DEFERRED PROSECUTION AGREEMENT**

Defendant Propex Derivatives Pty Ltd (the "Company"), pursuant to authority granted by the Company's members reflected in Attachment B, and the United States Department of Justice, Criminal Division, Fraud Section (the "Fraud Section"), enter into this deferred prosecution agreement (the "Agreement").

**Criminal Information and Acceptance of Responsibility**

1. The Company acknowledges and agrees that the Fraud Section will file the attached one-count criminal Information in the United States District Court for the Northern District of Illinois charging the Company with spoofing, in violation of Title 7, United States Code, Sections 6c(a)(5)(C) and 13(a)(2). In so doing, the Company: (a) knowingly waives its right to indictment on this charge, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); and (b) knowingly waives any objection with respect to venue to any charges by the United States arising out of the conduct described in the Statement of Facts attached hereto as Attachment A and consents to the filing of the Information, as provided under the terms of this Agreement, in the United States District Court for the Northern District of Illinois. The Fraud Section agrees to defer prosecution of the Company pursuant to the terms and conditions described below.

2. The Company admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, members, employees, and agents as charged in the Information, and as set forth in the attached Statement of Facts, and that the allegations described in the Information and the facts described in the attached Statement of Facts are true and accurate. Should the Fraud Section pursue the prosecution that is deferred by this Agreement, the Company stipulates to the admissibility of the attached Statement of Facts in any proceeding, including any trial, guilty plea, or sentencing proceeding, and will not contradict anything in the attached Statement of Facts at any such proceeding.

**Term of the Agreement**

3. This Agreement is effective for a period beginning on the date on which the Information is filed and ending three years from that date (the "Term"). The Company agrees, however, that, in the event the Fraud Section determines, in its sole discretion, that the Company has knowingly violated any provision of this Agreement or has failed to completely perform or fulfill each of the Company's obligations under this Agreement, an extension or extensions of the Term may be imposed by the Fraud Section, in its sole discretion, for up to a total additional time period of one year, without prejudice to the right of the Fraud Section to proceed as provided in Paragraphs 24-28 below. Any extension of the Agreement extends all terms of this Agreement, including the terms of the reporting requirement in Attachment D, for an equivalent period. Conversely, in the event the Fraud Section finds, in its sole discretion, that there exists a change in circumstances sufficient to eliminate the need for the reporting requirement in Attachment D, and that the other provisions of this Agreement have been satisfied, the Agreement may be terminated early.

### Relevant Considerations

4. The Fraud Section enters into this Agreement based on the individual facts and circumstances presented by this case and the Company, including:

a. the Company did not receive voluntary disclosure credit because it did not voluntarily and timely disclose to the Fraud Section the conduct described in the Statement of Facts attached hereto as Attachment A to this Agreement (“Statement of Facts”);

b. the Company received credit for its cooperation with the Fraud Section’s investigation, including voluntarily making a foreign-based employee available for an interview, producing documents to the Fraud Section located in a foreign country, and collecting and producing voluminous evidence and information to the Fraud Section;

c. the Company provided to the Fraud Section all relevant facts known to it, including information about the individuals involved in the conduct described in the attached Statement of Facts;

d. the nature and seriousness of the offense conduct, which involved thousands of instances of unlawful trading activity by a former trader at the Company, Jiongsheng (“Jim”) Zhao, between July 2012 and March 2016;

i. additionally, in May 2014, the Company’s clearing firm flagged certain trading activity by Zhao on the Chicago Mercantile Exchange (“CME”) and an Australian exchange as having triggered the clearing firm’s alerts for potential spoofing. The Company’s senior management met with the clearing firm to discuss Zhao’s trading activity as well as the Company’s planned remediation, which included certain changes to the Company’s compliance and trade surveillance programs. Despite those changes, however, the Company failed to identify

spoofing activity on the CME by Zhao during the time period from May 2014 to March 2016;

ii. further, in March 2016, the CME began an investigation into Zhao's trading activity in connection with E-mini S&P 500 futures contracts, including into potential spoofing by Zhao when he placed certain large orders. As part of that investigation, Zhao submitted to an interview with the CME, and provided written responses, to explain his trading activity. During Zhao's interview with the CME, and in certain written responses, Zhao made false and misleading statements to the CME regarding the large orders that were material to the CME's investigation into Zhao's trading activity;

e. the Company engaged in certain remedial measures by enhancing its compliance program and controls to ensure they were designed to detect and deter spoofing, commodities fraud, and other types of market manipulation. Among other things, in March 2018, the Company engaged an independent compliance consulting firm to conduct an assessment of the adequacy and effectiveness of the Company's compliance program, including on-site interviews of relevant personnel, reviews of written policies, and reviews of additional controls and processes. Following that review, the Company undertook a significant enhancement of its compliance program and internal controls, including:

i. revising the Company's compliance program and internal controls, including revisions and updates to its compliance policy in response to the independent compliance consulting firm's review;

- ii. contracting with a third-party vendor to provide automated trade surveillance, including surveillance for manipulative and deceptive trading such as spoofing and as part of this surveillance program alerts must be cleared by senior management; and
- iii. increasing the resources dedicated to compliance;
- f. the Company has enhanced and has committed to continuing to enhance its compliance program and internal controls, including ensuring that its compliance program satisfies the minimum elements set forth in Attachment C to this Agreement (“Corporate Compliance Program”);
- g. based on the Company’s remediation and the current state of its compliance program, and the Company’s agreement to report to the Fraud Section as set forth in Attachment D to this Agreement (“Corporate Compliance Reporting”), the Fraud Section determined that an independent compliance monitor was unnecessary;
- h. the Company has no prior criminal history;
- i. the Company has agreed to continue to cooperate with the Fraud Section as set forth in Paragraph 5, below; and
- j. the Company has resolved with the United States Commodity Futures Trading Commission (“CFTC”) through a proceeding pursuant to Section 6(c) and (d) of the Commodity Exchange Act, relating to the conduct described in the Statement of Facts.

**Future Cooperation and Disclosure Requirements**

5. The Company shall cooperate fully with the Fraud Section in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other conduct related to violations of the Commodity Exchange Act, Title 7, United States Code, Section 1, *et seq.*, and the commodities fraud statute, Title 18, United States Code, Section 1348

(collectively and hereafter, the “Commodities Laws”) that is under investigation by the Fraud Section until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded, or the end of the term specified in Paragraph 3. At the request of the Fraud Section, the Company shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies in any investigation of the Company, its affiliates, or any of its present or former officers, members, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other conduct related to violations of the Commodities Laws. The Company’s cooperation pursuant to this Paragraph is subject to applicable law and regulations, as well as valid claims of attorney-client privilege or attorney work product doctrine; however, the Company must provide to the Fraud Section a log of any information or cooperation that is not provided based on an assertion of law, regulation, or privilege, and the Company bears the burden of establishing the validity of any such assertion. The Company agrees that its cooperation pursuant to this paragraph shall include, but not be limited to, the following:

a. The Company shall truthfully disclose all factual information with respect to its activities and those of its parent company and affiliates, and those of its present and former members, officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which the Company has any knowledge or about which the Fraud Section may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Company to provide to the Fraud Section, upon request, any document, record, or other tangible evidence about which the Company has knowledge or about which the Fraud Section may inquire of the Company.

b. Upon request of the Fraud Section, the Company shall designate knowledgeable employees, agents, or attorneys to provide to the Fraud Section the information and materials described in Paragraph 5(a) above on behalf of the Company. It is further understood that the Company must at all times provide complete, truthful, and accurate information.

c. The Company shall use its best efforts to make available for interviews or testimony, as requested by the Fraud Section, present or former officers, members, employees, agents, and consultants of the Company. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of the Company, may have material information regarding the matters under investigation.

d. With respect to any information, testimony, documents, records, or other tangible evidence provided to the Fraud Section pursuant to this Agreement, the Company consents to any and all disclosures to other governmental authorities, including United States authorities and those of a foreign government of such materials as the Fraud Section, in its sole discretion, shall deem appropriate.

6. In addition to the obligations in Paragraph 5, during the Term, should the Company learn of any evidence or allegation of conduct that may constitute a violation of the Commodities Laws, the Company shall promptly report such evidence or allegation to the Fraud Section.

**Total U.S. Monetary Amount**

7. The Fraud Section and the Company agree that the U.S. Criminal Monetary Amount to be paid by the Company pursuant to this Agreement is \$1,000,000, which is comprised

of the following components set forth below: (i) a Criminal Monetary Penalty in the amount of \$462,271; (ii) a Criminal Disgorgement Amount of \$73,429; and (iii) a Victim Compensation Payment Amount of \$464,300.

8. The Fraud Section agrees that the amount of the Criminal Monetary Penalty will be offset by the amount of any payment made pursuant to the order and settlement between the Company and the CFTC relating to the conduct described in the attached Statement of Facts.

9. The Company acknowledges that no tax deduction may be sought in connection with the payment of any of the components of the U.S. Criminal Monetary Amount. The Company shall not seek or accept directly or indirectly reimbursement or indemnification from any source with regard to the U.S. Criminal Monetary Amount that the Company pays pursuant to this Agreement or to any other agreement entered into with an enforcement authority or regulator, including the CFTC, concerning the facts set forth in the attached Statement of Facts.

#### **Payment of Criminal Monetary Penalty**

10. The Fraud Section and the Company agree that application of the United States Sentencing Guidelines (“USSG” or “Sentencing Guidelines”) to determine the applicable fine range yields the following analysis:

- a. The November 1, 2018 USSG are applicable to this matter.
- b. Offense Level. Based upon USSG § 2B1.1, the total offense level is 22, calculated as follows:

(a)(1)	Base Offense Level	6
(b)(1)(G)	Loss Exceeds \$250,000	+12
(b)(2)(A)(i)	More Than 10 Victims	+2
(b)(10)	Sophisticated Means	+2
<b>TOTAL</b>		<u>22</u>



c. Base Fine. Based upon USSG § 8C2.4(a)(1), the base fine is \$2,000,000 (the pecuniary loss under USSG § 8C2.4(a)(3) is less than the \$2,000,000 fine indicated in the Offense Level Fine Table under §8C2.4(d))

d. Culpability Score. Based upon USSG § 8C2.5, the culpability score is 5, calculated as follows:

(a) Base Culpability Score	5
(b)(4) the organization had 50 or more employees and an individual within substantial authority personnel of the organization participated in, condoned, or was willfully ignorant of the offense	+2
(g)(2) the organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct	-2
<b>TOTAL</b>	<u>5</u>

Calculation of Fine Range:

Base Fine	\$2,000,000
Multipliers	1 (min) / 2 (max)
Fine Range	\$2,000,000 / \$4,000,000

11. The Company agrees to pay a Criminal Monetary Penalty in the amount of \$462,271 to the United States Treasury no later than the end of the Term pursuant to payment instructions provided by the Fraud Section, in its sole discretion. The Company and the Fraud Section agree that this Criminal Monetary Penalty is appropriate given the facts and circumstances of this case, including the Relevant Considerations described in Paragraph 4 of this Agreement, and given the Company's inability to pay an amount within the range calculated under the Sentencing Guidelines because it would threaten the continued viability of the Company and impair the Company's ability to make restitution to victims.

12. The \$462,271 Criminal Monetary Penalty is final and shall not be refunded. Furthermore, nothing in this Agreement shall be deemed an agreement by the Fraud Section that

\$462,271 is the maximum fine that may be imposed in any future prosecution, and the Fraud Section is not precluded from arguing in any future prosecution that the Court should impose a higher fine, although the Fraud Section agrees that under those circumstances, it will recommend to the Court that any amount paid as part of the Criminal Monetary Penalty should be offset against any fine the Court imposes as part of a future judgment.

#### **Payment of Criminal Disgorgement Amount**

13. The Company agrees that the overall profit it earned from Zhao's trading activity, including the conduct set forth in the Statement of Facts, is at least \$73,429. The Company hereby agrees to disgorge to the United States the sum of \$73,429 (the "Criminal Disgorgement Amount"). The Company shall pay the Criminal Disgorgement Amount no later than the end of the Term pursuant to payment instructions provided by the Fraud Section, in its sole discretion.

14. The Criminal Disgorgement Amount paid is final and shall not be refunded should the Fraud Section later determine that the Company has breached this Agreement and commence a prosecution against the Company. In the event of a breach of this Agreement and subsequent prosecution, the Fraud Section may pursue additional disgorgement and civil and criminal forfeiture in excess of the Criminal Disgorgement Amount. The Fraud Section agrees that in the event of a subsequent breach and prosecution, it will recommend to the Court that the amount paid pursuant to this Agreement be offset against whatever disgorgement the Court shall impose as part of its judgment. The Company understands that such a recommendation will not be binding on the Court.

#### **Payment of Victim Compensation Amount**

15. The Company agrees to pay the amount of \$464,300 in order to compensate victims for their losses in connection with the conduct set forth in the Statement of Facts (hereafter, the "Victim Compensation Amount"). The Company shall pay the full Victim Compensation Amount

to the United States no later than fifteen (15) business days after the Agreement is fully executed pursuant to payment instructions provided by the Fraud Section in its sole discretion.

16. The Fraud Section shall serve as the claims administrator for making victim compensation payments, and shall have sole discretion to determine how the Victim Compensation Amount will be disbursed.

17. The Company agrees that any unclaimed part of the Victim Compensation Amount remaining at the end of the Term shall revert to the United States in the form of an additional Criminal Monetary Penalty.

#### **Conditional Release from Liability**

18. Subject to Paragraphs 24-28 of this Agreement, the Fraud Section agrees, except as provided in this Agreement, that it will not bring any criminal or civil case against the Company relating to any of the conduct described in the attached Statement of Facts or the criminal Information filed pursuant to this Agreement. The Fraud Section, however, may use any information related to the conduct described in the attached Statement of Facts against the Company: (i) in a prosecution for perjury or obstruction of justice; (ii) in a prosecution for making a false statement; (iii) in a prosecution or other proceeding relating to any crime of violence; or (iv) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code.

a. This Agreement does not provide any protection against prosecution for any future conduct by the Company.

b. In addition, this Agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with the Company.

### **Corporate Compliance Program**

19. The Company represents that it has implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of the Commodities Laws throughout its operations, including those of its affiliates, agents, and joint ventures (to the extent that the Company manages or controls such joint ventures), and those of its contractors and subcontractors whose responsibilities relate to commodities trading or supervision of commodities trading, including, but not limited to, the minimum elements set forth in Attachment C.

20. In order to address any deficiencies in its internal controls, policies, and procedures, the Company represents that it has undertaken, and will continue to undertake in the future, in a manner consistent with all of its obligations under this Agreement, a review of its existing controls (including its trade surveillance tools), policies, and procedures regarding compliance with the Commodities Laws. Where necessary and appropriate, the Company agrees to adopt a new compliance program, or to modify its existing one, including its internal controls, compliance policies, and procedures in order to ensure that it maintains an effective compliance program, including a system of internal controls, designed to effectively detect and deter violations of the Commodities Laws. The compliance program, including the system of internal controls, will include, but not be limited to, the minimum elements set forth in Attachment C.

### **Corporate Compliance Reporting**

21. The Company agrees that it will report to the Fraud Section annually during the Term regarding remediation and implementation of the compliance measures described in Attachment C. These reports will be prepared in accordance with Attachment D.

### **Deferred Prosecution**

22. In consideration of the undertakings agreed to by the Company herein, the Fraud Section agrees that any prosecution of the Company for the conduct set forth in the attached

Statement of Facts be and hereby is deferred for the Term. To the extent there is conduct disclosed by the Company that is not set forth in the attached Statement of Facts, such conduct will not be exempt from further prosecution and is not within the scope of, or relevant to, this Agreement.

23. The Fraud Section further agree that if the Company fully complies with all of its obligations under this Agreement, the Fraud Section will not continue the criminal prosecution against the Company described in Paragraph 1 of this Agreement and, at the conclusion of the Term, this Agreement shall expire. Within six months after the Agreement's expiration, the Fraud Section shall seek dismissal with prejudice of the criminal Information filed against the Company described in Paragraph 1, and agrees not to file charges in the future against the Company based on the conduct described in this Agreement and the attached Statement of Facts.

#### **Breach of the Agreement**

24. If, during the Term, the Company (i) commits any felony under United States federal law; (ii) provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with its disclosure of information about individual culpability; (iii) fails to cooperate as set forth in Paragraphs 5 and 6 of this Agreement; (iv) fails to implement a compliance program as set forth in Paragraphs 19 and 20 of this Agreement and Attachment C; or (v) otherwise fails to completely perform or fulfill each of the Company's obligations under this Agreement, regardless of whether the Fraud Section becomes aware of such a breach after the Term is complete, the Company shall thereafter be subject to prosecution for any federal criminal violation of which the Fraud Section has knowledge, including, but not limited to, the charges in the Information described in Paragraph 1, which may be pursued by the Fraud Section in the United States District Court for the Northern District of Illinois or any other appropriate venue. The Company agrees not to contest the Fraud Section's determination of breach. The Company further understands that in the event it breaches this Agreement, the Fraud

