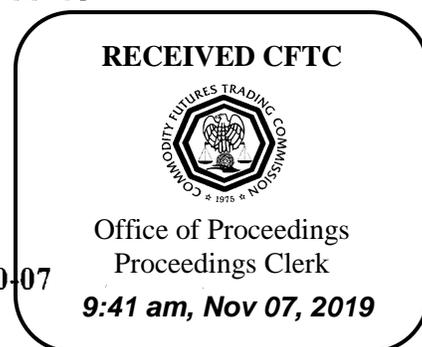


UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION



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In the Matter of: )  
 )  
 )  
Mitsubishi Corporation RtM )  
Japan Ltd., )  
 )  
Respondent. )  
\_\_\_\_\_ )

CFTC Docket No. 20-07

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

**I. INTRODUCTION**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from on or about April 5, 2018, through on or about April 13, 2018, Mitsubishi Corporation RtM Japan Ltd. (“RtM Japan” or “Respondent”) violated Section 4c(a)(5)(C) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6c(a)(5)(C) (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

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

<sup>1</sup> Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

## II. FINDINGS

The Commission finds the following:

### A. SUMMARY

From on or about April 5, 2018 through on or about April 13, 2018 (the “Relevant Period”), RtM Japan—by and through one of its traders (“Trader A”)—engaged in the disruptive trading practice of “spoofing” (i.e., bidding or offering with the intent to cancel the bid or offer before execution) involving certain precious metals futures products traded on designated contract markets in the United States. Respondent’s disruptive trading violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

In accepting Respondent’s Offer, the Commission recognizes Respondent’s cooperation with the Division of Enforcement’s (“Division”) investigation of this matter. The Commission notes that Respondent’s cooperation and remediation is reflected in the form of a reduced civil monetary penalty.

### B. RESPONDENT

**Mitsubishi Corporation RtM Japan Ltd.** is a company incorporated under the laws of Japan, with its main office in Tokyo, Japan. As part of its business activities, RtM Japan engages in the trading of precious metals and other products. During the Relevant Period, RtM Japan engaged in the proprietary trading of futures contracts in the United States. RtM Japan sponsored Trader A as a secondee in its Tokyo office. RtM Japan has never been registered in any capacity with the Commission.

### C. FACTS

During the Relevant Period, RtM Japan employed or sponsored (via secondment) a number of traders, including Trader A, a secondee, in its Tokyo office. Several months prior to the start of the Relevant Period, RtM Japan selected Trader A, who was on secondment and temporary leave from Trader A’s business development duties, to embark on a rotation on a trading desk. Trader A had no trading experience, and the goal of the rotation was to provide Trader A with such experience. RtM Japan ultimately placed Trader A on a desk that engaged in the trading of precious metals. As part of Trader A’s duties during the Relevant Period, Trader A traded a variety of futures contracts, including futures contracts based on platinum and palladium on the New York Mercantile Exchange, Inc. (“NYMEX”), a registered futures exchange and designated contract market. Trader A accessed these markets through a trading platform located in RtM Japan’s Tokyo office.

During the Relevant Period, Trader A placed multiple orders for futures contracts with the intent to cancel the orders before their execution. Typically, Trader A first placed a large order that Trader A intended to cancel before execution (the “Spoof Order”). Soon thereafter, in the same market, Trader A entered a smaller order that Trader A intended to execute (the “Genuine Order”) opposite the Spoof Order, while the Spoof Order rested. In many instances, Trader A received a partial or complete fill on the Genuine Order, and then cancelled the Spoof

Order before the Spoof Order was filled. At times, Trader A layered<sup>2</sup> the Spoof Orders, and entered multiple Genuine Orders in conjunction with Spoof Orders. Trader A engaged in this spoofing activity in order to test how the market would react. Trader A primarily placed Spoof Orders for platinum futures contracts but also for palladium futures contracts.

Upon being informed by its futures commission merchant of potential spoofing by Trader A, RtM Japan promptly suspended Trader A from trading. RtM Japan conducted an internal investigation, and cooperated with the Division's investigation. RtM Japan represents that it has undertaken a series of proactive remedial measures and other steps to improve its processes. Among other things, it implemented an electronic trading monitoring system to screen for suspicious trades. RtM Japan overhauled its training program, and conducted relevant training sessions and seminars on market misconduct in the U.S. futures markets. Finally, RtM Japan retained a third party expert to develop and implement comprehensive risk assessment for precious metals trading.

### III. LEGAL DISCUSSION

#### A. Section 4c(a)(5)(C) of the Act – Spoofing Violations

Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012), makes it unlawful for “[a]ny person to engage in any 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).” As described above, Trader A entered into multiple bids or offers on a registered entity with the intent to cancel the bids or offers before execution in violation of Section 4c(a)(5)(C) of the Act. *See, e.g., United States v. Coscia*, 866 F.3d 782, 791 (7th Cir. 2017), *cert. denied*, 138 S. Ct 1989 (2018).

#### B. Respondent RtM Japan Is Liable for the Acts of Its Agent

Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation (“Regulation”) 1.2, 17 C.F.R. § 1.2 (2019), provide that the act, omission, or failure of any official, agent or other person acting for any individual, association, partnership, corporation, or trust within the scope of his or her employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust. Under Section 2(a)(1)(B) and Regulation 1.2, strict liability is imposed upon principals for the actions of their agents acting within the scope of their employment. *See Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966 (7th Cir. 1986) (holding that principals are strictly liable for the acts of their agents); *see also Dohmen-Ramirez v. CFTC*, 837 F.2d 847, 857-58 (9th Cir. 1988) (same); *CFTC v. Byrnes*, 58 F. Supp.3d 319, 324 (S.D.N.Y. 2014) (same). Trader A’s spoofing was committed within the scope of Trader A’s employment with RtM Japan. *See, e.g., CFTC v. Int’l Fin. Services (New York) Inc.*, 323 F. Supp.2d 482, 499 n.12 (S.D.N.Y. 2004) (analyzing scope of employment based on the totality of the circumstances).

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<sup>2</sup> “Layered” orders typically involve a series of orders placed at gradually increasing or decreasing price levels on the same side of the order book.

Trader A engaged in the conduct described herein within the course and scope of Trader A's employment at RtM Japan. Therefore, RtM Japan is liable for the acts, omissions and failures of Trader A, as described above, that constituted violations of Section 4c(a)(5)(C) of the Act.

#### **IV. FINDINGS OF VIOLATIONS**

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).

#### **V. OFFER OF SETTLEMENT**

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement 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 the Commission's consideration of the Offer;
  6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012), and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2019), relating to, or arising from, this proceeding;
  7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201-253, 110 Stat. 847, 857-74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
  8. Any claims of double jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;

- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer; and
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
  - 1. Makes findings by the Commission that Respondent violated Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012);
  - 2. Orders Respondent to cease and desist from violating Section 4c(a)(5)(C) of the Act;
  - 3. Orders Respondent to pay a civil monetary penalty in the amount of five hundred thousand dollars (\$500,000), plus post-judgment interest; and
  - 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

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

## VI. ORDER

### Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Section 4c(a)(5)(C) of the Act, 7 U.S.C. § 6c(a)(5)(C) (2012).
- B. Respondent shall pay a civil monetary penalty in the amount of \$500,000 (five hundred thousand dollars) ("CMP Obligation"), within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326  
Commodity Futures Trading Commission  
Division of Enforcement  
6500 S. MacArthur Blvd.  
HQ Room 181  
Oklahoma City, OK 73169  
(405) 954-6569 office  
(405) 954-1620 fax  
9-AMC-AR-CFTC@faa.gov

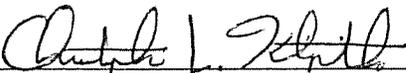
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its 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 a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
  2. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Division, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action. As part of such cooperation, Respondent agrees to the following for a period of five years from the date of the entry of this Order, or until all related investigations and litigation are concluded, including through the appellate review process, whichever period is longer:
    - i. Preserve all records relating to the subject matter of this proceeding, including, but not limited to, audio files, electronic mail, other documented communications, and trading records;
    - ii. Subject to applicable laws and regulations, comply fully, promptly, completely, and truthfully with all inquiries and requests for information or documents;
    - iii. Provide authentication of documents and other evidentiary material;
    - iv. Subject to applicable laws and regulations, provide copies of documents within Respondent's possession, custody, or control;

- v. Subject to applicable laws and regulations, Respondent will make its best efforts to produce any current (as of the time of the request) officer, director, employee, or agent of Respondent, regardless of the individual's location, and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including, but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation; and
  - vi. Subject to applicable laws and regulations, Respondent will make its best efforts to assist in locating and contacting any prior (as of the time of the request) officer, director, employee, or agent of Respondent.
3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.

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

By the Commission.

  
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Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: November 7, 2019