

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of

CFTC Docket No: 04-13

Olam International Limited,

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

Respondent.

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Olam International Limited ("Olam") has violated Section 4c(a) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 6c(a) (2001), and Section 1.38(a) of the Commission's Regulations, 17 C.F.R. § 1.38(a) (2003). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Olam engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Olam has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Olam acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act, and Making Findings and Imposing Remedial Sanctions ("Order"). Olam, without admitting or denying the findings of fact or conclusions of law herein, consents to the use of the findings contained in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Olam does not consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, as the sole basis for any other proceeding brought by the Commission other than a proceeding brought to enforce the terms of this Order. Nor does Olam consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding. The findings made in this Order are not binding on any other person or entity named as a defendant or respondent in this or any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

On two separate occasions, in June and July 2002, respectively, Olam entered simultaneous or virtually simultaneous orders for equal-and-opposite spread transactions at identical price differentials in cocoa futures contracts on the Coffee, Sugar & Cocoa Exchange ("CSCE"), a Division of the New York Board of Trade. The orders were placed orally by an Olam trader in Singapore with futures commission merchants ("FCMs") in the United Kingdom ("U.K."), who clear their transactions on the CSCE through omnibus accounts held with their affiliated companies in the United States ("U.S."). On both occasions, Olam's orders were subsequently directed to the same floor broker in the CSCE cocoa pit, who executed the orders as cross trades. Thus, Olam was on each side of the transaction and the trades resulted in a virtual financial nullity.² Further, Olam's equal-and-opposite spread trades neither established nor liquidated a *bona fide* market position in CSCE cocoa futures contracts.

Because Olam's trader did not intend to enter into a *bona fide* market position when he entered the simultaneous or virtually simultaneous orders for equal-and-opposite spread transactions in cocoa futures contracts on the CSCE, Olam's trader violated Section 4c(a) of the Commodity Exchange Act, 7 U.S.C. §§ 6c(a) (2001), which, *inter alia*, prohibits any person from entering into a transaction that is, or is of the character of, or is commonly known to the trade as, a 'wash sale.' By engaging in wash sales, Olam's trader also violated the proscription contained in Section 4c(a) of the Act, 7 U.S.C. §§ 6c(a) (2001), against entering into a transaction that is used to cause any price to be reported, registered or recorded that is not a true and *bona fide* price. Further, by entering into transactions that were not executed openly and competitively, or by other equally open and competitive methods, but in a manner that avoided the market risk and price competition that legitimate, competitive trading entails, Olam's trader violated Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2002). Because Olam's trader was an employee of Olam and acting as its agent, Olam is liable for the violations of Section 4c(a) of the Act, 7 U.S.C. §§ 6c(a) (2001) and Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2002), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001).

B. RESPONDENT

Olam International Limited is a limited liability company incorporated in Singapore. Olam's business address is 9 Tamasek Boulevard, #11-02 Suntec Tower Two, Singapore 038989. Its principal activities, and those of its subsidiaries, are the sourcing, processing and trading of agricultural commodities. Olam is not registered with the Commission in any capacity.

² Excluding commissions.

C. FACTS

June 13, 2002

On June 13, 2002, an Olam trader in Singapore entered a spread order to sell 345 July 2002/March 2003 cocoa futures spreads at a 10 point price differential with Fimat International Bank SA (UK Branch) ("Fimat"), an FCM in London, UK.³ Virtually simultaneously, Olam's trader in Singapore also entered a spread order to buy 345 July 2002/March 2003 cocoa futures spreads at a 10 point price differential with Refco Overseas Ltd. ("Refco"), an FCM in London, UK.

Olam's virtually simultaneous equal-and-opposite spread orders were subsequently relayed to a floor broker in the CSCE cocoa pit, who crossed the spread orders at a price of 1475 per contract for the July 2002 leg (*i.e.*, the purchase and sale of 345 July 2002 cocoa futures contracts) and 1465 per contract for the March 2003 leg (*i.e.*, the purchase and sale of 345 March 2003 cocoa futures contracts), which resulted in Olam being the ultimate customer on each side of the transaction.

July 10, 2002

On July 10, 2002, in what took the form of a 'give up' trade, Olam's trader in Singapore entered a paired order with Refco in London for two equal-and-opposite spread trades in CSCE cocoa futures contracts. The first part of this order instructed Refco to buy 450 September 2002/December 2002 cocoa futures spreads at a 19-point price differential. The second part of this order instructed Refco to sell 450 September 2002/December 2002 cocoa futures spreads also at a 19 point price differential, and to give this spread transaction up to ADM Investor Services Inc. ("ADM") in Chicago, which is the clearing FCM for ADM Investor Services International Limited, another London-based FCM with which Olam maintained an account.

Olam's simultaneous, and paired, equal-and-opposite spread orders were subsequently relayed to a floor broker in the CSCE cocoa futures pit in New York, who crossed the spread orders at a price of 1780 per contract for the September 2002 leg (*i.e.*, the purchase and sale of 450 September 2002 cocoa futures contracts) and 1761 per contract for the December leg (*i.e.*, the purchase and sale of 450 December 2002 cocoa futures contracts), which resulted in Olam being the ultimate customer on each side of the transaction.

With regard to both of these transactions, Olam asserts that its FCMs did not inform it of the possibility that the transactions could have been executed by means of an ex-pit transfer pursuant to CSCE Floor Trading Rule 3.06. Olam also asserts that it was not aware of the exchange rules that authorize such ex-pit transfers.

³ An order to sell a spread, *e.g.*, "sell July 2002/March 2003," refers to selling the nearby futures contract (*i.e.*, July 2002) and buying the later futures contract (*i.e.*, March 2003). Conversely, an order to buy a spread refers to buying the nearby futures contract and selling the later futures contract.

D. LEGAL DISCUSSION

1. **Olam entered into Wash Sales in Violation of Section 4c(a) of the Act**

Section 4c(a) of the Act makes it “unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction” that “is, is of the character of, or is commonly known to the trade as, a ‘wash sale’ . . .” The central characteristic of a wash sale is the intent to avoid making a *bona fide* transaction or taking a *bona fide* market position. *In re Citadel Trading Co. of Chicago, Ltd.*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,082 at 32,190 (CFTC May 12, 1986).

The factors that indicate a wash result are (1) the purchase and sale (2) of the same delivery month of the same futures contract (3) at the same (or a similar) price. *In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,653 (CFTC Jan. 25, 1991). Here, Olam bought and sold the same delivery month of the same futures contract at the same price in two delivery months on June 13, 2002 (*i.e.*, 345 July 2002 cocoa futures contracts at 1475 per contract and 345 March 2003 cocoa futures contracts at 1465 per contract) and again in two delivery months on July 10, 2002 (*i.e.*, 450 September 2002 cocoa futures contracts at 1780 per contract and 450 December 2002 cocoa futures contracts at 1761 per contract).

Nonetheless, in addition to these factors, the liability of the customer initiating the wash sale depends upon evidence demonstrating that the customer intended to negate market risk or price competition. *In re Piasio*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,276 at 50,685 (CFTC Sep. 29, 2000). Market risk or price competition is negated “when it is reduced to a level that has no practical impact on the transactions at issue.” *In re Gimbel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,213 at 35,004 n.7 (CFTC Apr. 14, 1988), *aff’d as to liability*, 872 F.2d 196 (7th Cir. 1989). Similarly, the liability of a participant in the wash sale depends upon the demonstration that the participant knew, at the time he chose to participate in the transaction, that the transaction was designed to achieve a wash result in a manner that negated risk. *In re Bear Sterns & Co.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,665 (CFTC Jan. 25, 1991).

While the intent to avoid a *bona fide* market position can properly be inferred from prearrangement, it can also be inferred “from the intentional structuring of a transaction in a manner to achieve the same result as prearrangement.” *In re Three Eight Corporation*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,749 at 40,444 n.15 (CFTC Jun. 16, 1993) (citing *In re Collins* [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,982 at 31,900-01 (CFTC Apr. 4, 1986), *rev’d on other grounds sub. nom. Stoller v. CFTC*, 834 F.2d 262 (2d Cir. 1987) (“*Collins P*”). “In an individual transaction . . . , a trader may avoid a *bona fide* market transaction in many instances merely by structuring the buy and sell orders so that they are simultaneous, or practically so, and by signaling . . . , directly or indirectly, that a price match is the objective of the transaction.” *Collins I*, ¶ 22,982 at 31,900-01.

On June 13, 2002, Olam, via its trader in Singapore, submitted virtually simultaneous equal-and-opposite spread orders to two separate FCMs with the instructions that the spreads be executed at an identical price differential. Virtually simultaneous orders to buy and sell the same quantity of the same futures contract, “with an instruction calculated to enhance the likelihood that the buy and sell orders would be filled at the same or a similar price is persuasive evidence that [the respondent] did not intend that the orders result in *bona fide* trading transactions when he initiated them.” *Collins I*, ¶ 22,982 at 31,900.

Further, on July 10, 2002, Olam, again via its trader in Singapore, entered simultaneous and paired equal-and-opposite spread orders with Refco, with the instructions that they be executed at an identical price differential and one of the spreads then be ‘given up’ to ADM. “Orders to purchase and sell for the account of the same customer the identical quantity of the same futures contract at identical prices . . . entered virtually simultaneously” are “classic indicia of an intent to avoid making a *bona fide* trading transaction.” *Citadel*, ¶ 23,082 at 32,190.

Moreover, according to Olam’s written responses to the Division’s inquiries, the underlying commercial rationale for entering into the spread trades on June 13 and July 10, 2002 was to “offset” existing offsetting positions that were held by Olam at different FCMs. Because Olam’s equal-and-opposite spread transactions appeared to be the purchase and sale of CSCE cocoa futures contracts, but did not in fact result in establishing or liquidating a *bona fide* market position, and were not intended to do so, Olam’s trader in Singapore violated the prohibition against wash sales contained in Section 4c(a) of the Act. *In re Compania Salvadorena de Café, S. A.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,886 at 27,819 (CFTC Oct. 26, 1986) (A ‘wash sale’ is any transaction that gives the appearance of being a purchase or sale, but does not in fact result in establishing or liquidating a *bona fide* market position). Accordingly, Olam is liable for that violation pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

2. Olam Caused Prices to be Reported, Registered, or Recorded at Non-Bona Fide Prices in Violation of Section 4c(a) of the Act

Prices derived from wash sales are “not true and non-*bona fide* . . . [because] [s]uch trades and the reported prices do not reflect the forces of supply and demand” *In re Kuhlik*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,926 at 31,697 (ALJ Feb. 21, 1986). “It is the non-*bona fide* price that results from a . . . wash sale that constitutes one of the deleterious effects which the prohibition[] against . . . wash sales seek[s] to eradicate. This is because non-*bona fide* prices interfere with the competitive pricing mechanism . . . which serves as the foundation for the existence of organized futures markets.” *Id.*, ¶ 22,926 at 31,698.

In this case, Olam, through the actions of its trader in Singapore, neither bargained in good faith nor did it intend to effect a *bona fide* trade in relation to the equal-and-opposite spread orders that it entered on June 13 and July 10, 2002. Instead, the intention of Olam’s trader in Singapore—and therefore Olam’s intention—was to avoid entering into a *bona fide* market position by having its equal-and-opposite spread orders meet and be crossed in the CSCE cocoa pit.

Consequently, by entering into wash sales, Olam's trader in Singapore violated Section 4c(a), which makes it unlawful to offer to enter into, or to enter into, any commodity futures transaction "if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and *bona fide* price." *Gilchrist*, ¶ 24,993 at 37,653. Further, because the trader was an Olam employee and acting as its agent, Olam is liable for such violation pursuant to Section 2(a)(1)(B) of the Act.

3. Olam Executed Non-competitive Trades in Violation of Commission Regulation 1.38(a)

Commission Regulation 1.38(a) requires that all purchases and sales of commodity futures be executed "openly and competitively." The purpose of this requirement is to ensure that all trades are executed at competitive prices and that all trades are directed into a centralized marketplace to participate in the competitive determination of the price of futures contracts.⁴ Non-competitive trades are generally transacted in accordance with expressed or implied agreements or understandings between and among the traders. *Gilchrist*, ¶ 24,993 at 37,652. Trades can be noncompetitive even though they were executed in the pit. *In re Buckwalter*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,683 (CFTC Jan. 25, 1991) (citing *Laiken v. Dep't of Agriculture*, 345 F.2d 784, 785 (2d Cir. 1965)).

Olam, by structuring its simultaneous or virtually simultaneous orders for equal-and-opposite spread transactions as set forth above, avoided the market risk and price competition which legitimate, competitive trading entails. Accordingly, Olam's Singapore-based trader violated Commission Regulation 1.38(a) and, pursuant to Section 2(a)(1)(B) of the Act, Olam is liable for these violations.

IV.

OFFER OF SETTLEMENT

Olam has submitted an Offer in which it, without admitting or denying the findings herein: (1) acknowledges service of the Complaint and the Order; (2) admits the jurisdiction of the Commission with respect to the matters set forth herein; (3) waives a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, all claims which it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63 (1996), and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2003), relating to or arising from this action, and any claim of Double Jeopardy based upon institution of this proceeding or the entry of any order imposing a civil monetary penalty or any other relief; (4) stipulates that the record basis on which the Order may be entered shall consist solely of the Complaint, Order and findings in the Order consented to in the Offer; and (5) consents to the Commission's issuance of the Order, which makes findings as

⁴ See Disapproval of Contract Market Rules (CFTC Apr. 27, 1981), 46 F.R. 23516 (Commission disapproving of the Commodity Exchange, Inc.'s proposal to conduct a trading session after the close of regular trading); and Senate Committee on Agriculture and Forestry, Report on H.R. 13113, S. Rep. No. 93-1131, 93rd Cong., 2nd Sess. 16 (1974).

set forth below and: (a) orders Olam to cease and desist from violating the provisions of the Act and Regulations that they have been found to have violated; (b) imposes a civil monetary penalty upon Olam of \$● ; (c) orders Olam to comply with the undertakings consented to in its Offer.

V.

FINDINGS OF VIOLATIONS

Solely on the basis of the consents evidenced by the Joint Offer, and prior to any adjudication on the merits, the Commission finds that Olam has violated Section 4c(a) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6c(a) (2001), and Section 1.38(a) of the Commission's Regulations, 17 C.F.R. § 1.38(a) (2003).

VI.

ORDER

Accordingly, it is hereby ordered that:

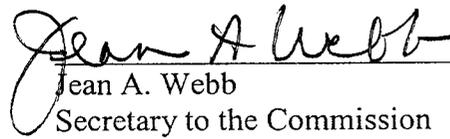
1. Olam cease and desist from violating Section 4c(a) of the Act and Section 1.38(a) of the Regulations;
 2. Olam pay a civil monetary penalty in the amount of twenty thousand (\$20,000) dollars due within ten days of the date of the Order; payment is to be made by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Olam as the payee and the name and docket of this proceeding. Olam shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if Olam fails to pay the full amount within fifteen (15) days of the due date, it shall be automatically prohibited from the privileges of all registered entities until it shows to the satisfaction of the Commission that payment of the full amount with interest thereon to the date of payment has been made;
 3. Olam acknowledges that failure to comply with the Order shall constitute a violation of the Order and may subject it to administrative or injunctive proceedings, pursuant to the Act; and
 4. Olam is directed to comply with its undertakings:
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- a. neither Olam nor any of its agents or employees shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order, or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision affects their: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Olam shall take all steps necessary to ensure that its agents or employees, if any, understand and comply with this undertaking.

- b. Olam will cooperate fully with the Commission's Division of Enforcement in this proceeding and any investigation, civil litigation and administrative proceeding related to this proceeding by, among other things: (i) responding promptly, completely, and truthfully to any inquiries or requests for information; (ii) providing authentication of documents; (iii) testifying completely and truthfully; and (iv) not asserting privileges under the Fifth Amendment of the United States Constitution.

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

By the Commission



Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission

Dated: April 6, 2004