

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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 OFFICE OF PROCEEDINGS
 PROCEEDINGS OF THE

In the Matter of

**CIC Banque Credit Industriel D'Alsace
 Et De Lorraine Société Anonyme,**

Respondent

CFTC Docket No: 07

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

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that CIC Banque Credit Industriel D'Alsace Et De Lorraine Société Anonyme ("Banque CIAL") has violated Section 4c(a) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6c(a) (2002). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Banque CIAL 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 this administrative proceeding, Banque CIAL has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings of fact or violations herein, Banque CIAL acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act Making Findings and Imposing Remedial Sanctions ("Order").¹

¹ Banque CIAL consents to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Banque CIAL 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 Commission registration proceeding related to it, a proceeding in bankruptcy related to it, or to enforce the terms of the Order. Nor does Banque CIAL 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 June 30, 2004, an employee of Banque CIAL's Capital Markets Division placed orders to simultaneously buy and sell 2,940 contracts of September 2004 Five Year Treasury Note futures contracts ("Five Year Note Futures Transactions") for a proprietary trading account traded by Banque CIAL. Shortly thereafter the same employee placed a second set of orders to simultaneously buy and sell 2,363 contracts of September 2004 Two Year Treasury Note futures contracts ("Two Year Note Futures Transactions") for the same proprietary account. The Five Year Note Futures Transactions and the Two Year Note Futures Transactions are collectively referred to as the "T Note Transactions." The T Note Transactions were executed on the Chicago Board of Trade ("CBOT").

The buy and sell orders for the Five Year Note Futures were executed at the same time and at the same price. The buy and sell orders for the Two Year Note Futures were also executed at the same time and at the same price. Each of the T Note Transactions resulted in no net change in market position for Banque CIAL. Banque CIAL asserts that it entered into the T Note Transactions for purposes of assessing its internal risk management system.

When Banque CIAL initiated the T Note Transactions it did not intend to take on new market exposure, change its position in the market or hedge an existing market position. Because Banque CIAL's intention was to negate market risk and thereby to avoid a *bona fide* market transaction, Banque CIAL violated Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2002), 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.'

B. RESPONDENT

CIC Banque Credit Industriel D'Alsace Et De Lorraine Société Anonyme is a French corporation which is part of the CIC group. Banque CIAL's address is 31 rue Jean Wenger-Valentin, Strasbourg, France. Banque CIAL has never been registered with the Commission in any capacity.

C. FACTS

1. The Five Year Note Futures Transactions

On June 30, 2004, an employee of Banque CIAL, who was in Strasbourg, France, placed orders to simultaneously buy and sell 2,940 contracts of Five Year Note Futures through a broker in Montreal Canada, who was employed at Fimat Canada, Inc. ("Fimat Canada"). Banque CIAL's employee did not specify the price at which the Five Year Note Futures Transactions were to be executed and they were treated as market orders by the broker accepting them at Fimat Canada. Banque CIAL's employee instructed the broker at Fimat Canada that the orders

were to be filled by 3 p.m. Paris time which was about 15 minutes from the time the order was placed.

The Fimat Canada broker transmitted the Five Year Note Futures Transactions to a broker at Fimat USA LLC ("Fimat USA"), a registered Futures Commission Merchant, who then contacted two brokers on the floor of the CBOT. The brokers on the floor of the CBOT executed both the buy and sell orders for the Five Year Note Futures at the same time and at the same price within approximately five minutes after the orders were submitted to them.

2. The Two Year Note Futures Transactions

Upon receiving telephonic confirmation of the fill of the Five Year Note Futures Transactions, Banque CIAL's employee placed orders with the same Fimat Canada broker to simultaneously buy and sell 2,363 Two Year Note Futures.

The Fimat Canada broker forwarded these orders to the broker at Fimat USA who had received the Five Year Note Futures Transactions. The Fimat USA broker then contacted two brokers on the floor of the CBOT different from those who executed the Five Year Note Futures Transactions, who then executed the buy and sell orders for the Two Year Note Futures. The orders were executed at about the same time and for the same price within about five minutes of the orders being sent to the floor brokers.

D. LEGAL DISCUSSION

1. Banque CIAL Knowingly Participated in the Entry of 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 of the character of, or is commonly known to the trade as, a 'wash sale' . . ." 7 U.S.C. § 6c(a) (2002). A wash sale is a form of fictitious transaction. *In re Gimbel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,213 at 35,003 (CFTC Apr. 14, 1988), *aff'd as to liability*, 872 F.2d 196 (7th Cir. 1989); *In re Goldwurm*, 7 A.D. 265, 274 (CEA 1948).

A wash sale is a transaction made without an intent to take a genuine, bona fide position in the market, such as a simultaneous purchase and sale designed to negate each other so that there is no change in financial position. *Reddy v. CFTC*, 191 F.3d 109, 115 (2nd Cir. 1999). *See also Goldwurm*, 7 Agric. Dec. at 274. Wash sales are "grave" violations, even in the absence of customer harm or appreciable market effect, because "they undermine confidence in the market mechanism that underlies price discovery." *In re Piasio*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,276 at 50,691 (CFTC Sep. 29, 2000), *aff'd sub nom. Wilson v. CFTC*, 322 F.3d 555, 559 (8th Cir. 2003) (wash sales are designed to give the appearance of submitting trades to the open market, while negating the risk or price competition incident to the market and produce a virtual financial nullity because the resulting net financial position is near or equal to zero.) *See also CFTC v. Savage*, 611 F.2d 270, 284 (9th Cir. 1979) (wash sales may mislead market participants because they do not reflect the forces of supply and demand).

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 show 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.” *Piasio*, ¶ 28,276 at 50,685 (citing *In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,653 (CFTC Jan. 25, 1991)). Here, Banque CIAL purchased and sold the same delivery month of the same futures contracts at the same price with the intention to avoid taking a *bona fide* market position.

In addition to the factors enumerated above, intent must be proved to establish a violation of Section 4c of the Act. *Reddy v. CFTC*, 191 F.3d 109, 119 (2nd Cir. 1999). In the context of a customer’s liability for a wash sale transaction, the scienter requirement relates to the customer’s intent at the time the challenged transactions are initiated; specifically whether the customer intended to negate market risk or price competition. *Piasio*, ¶ 28,276 at 50,685. Negated risk is not “the equivalent of no risk or the complete elimination of risk;” rather the Commission has “clearly held that risk is negated whenever it is “it is reduced to a level that has no practical impact on the transactions at issue.”” *Id.*, ¶ 28,276 at 50,688 (quoting *Gimbel*, ¶ 24,213 at 35,003 n.7). “[S]cienter may be inferred from the circumstantial evidence” and while motive is not an element of a trade practice case, “evidence of motive strengthens an inference of intent.” *Reddy*, 191 F.3d at 119 (citations omitted).

Banque CIAL’s avowed purpose in entering into the T Note Transactions was to assess its internal risk management system. The employee of Banque CIAL intentionally structured the T Note Transactions with the intent to negate market risk and price competition, to thereby avoid a *bona fide* market transaction. Accordingly, Banque CIAL knowingly participated in wash sales and therefore violated Section 4c(a) of the Act.

IV.

OFFER OF SETTLEMENT

Banque CIAL 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 possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2007), relating to, or arising from this 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 set forth below and: (a) orders Banque CIAL to cease and desist from violating the provisions of the Act and Regulations that it has been found to have violated; (b) imposes a civil monetary penalty

upon Banque CIAL of \$80,000; and (c) orders Banque CIAL to comply with the undertakings consented to in its Offer.

V.

FINDINGS OF VIOLATIONS

Solely on the basis of the consent evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Banque CIAL engaged in wash sales in violation of Section 4c(a) of the Act.

VI.

ORDER

Accordingly, it is hereby ordered that:

1. Banque CIAL cease and desist from violating Section 4c(a) of the Act;
2. Banque CIAL pay a civil monetary penalty in the amount of \$80,000 due within ten (10) 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:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman - AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169

If payment by electronic transfer is chosen, contact Marie Bateman at 405-954-6569 for instructions. Respondent shall accompany payment of the penalty with a cover letter that identifies the Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit a copy of the cover letter and the form of payment to:

Office of Cooperative Enforcement
Division of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581.

In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if Banque CIAL 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; and

3. Banque CIAL comply with the following undertakings:


A. Banque CIAL shall implement immediately, to the extent not already in place, procedures that insure that transactions made by Banque CIAL on United States markets fully comply with the rules and regulations of those markets and the Act and Regulations; and

B. Neither Banque CIAL, 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 Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent shall take all steps necessary to ensure that its agents or employees, if any, understand and comply with this undertaking.

Banque CIAL 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

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

By the Commission



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

Dated: September 27, 2007