

**UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION**

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11:15 am, Sep 30, 2013

In the Matter of)

Dominick Anthony Cognata,)

Respondent.)

) CFTC Docket No. 13-41

**COMPLAINT AND NOTICE OF HEARING PURSUANT SECTIONS 6(c) AND 6(d) OF
THE COMMODITY EXCHANGE ACT**

The Commodity Futures Trading Commission (“Commission”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges that:

I. SUMMARY

1. From on or about August 28, 2012 and through the present (the “relevant time”), Dominick Cognata (“Cognata”), a registered floor broker at the Commodity Exchange, Inc. (“COMEX”), failed to comply with a lawfully issued subpoena duces tecum to produce certain books and records relating to his trading activity. The documents sought by the Division include Cognata’s trading cards, order tickets and other records, such as emails and instant messages, documenting his trades of silver or gold futures or silver or gold options on futures on the. Thus, Cognata violated Section 4g of the Act, 7 U.S.C. § 6g, and Commission Regulations 1.31(a) and 1.35(a), 17 C.F.R. §§ 1.31(a) and 1.35(a).

II. PROPOSED RESPONDENT

2. **Dominick Cognata** has been a registered floor broker since 2005. During that same period, Cognata has been a member of COMEX, which has been designated as a contract market by the Commission. Cognata has been the subject of two Exchange disciplinary actions

involving noncompetitive, pre-arranged trading violations. Cognata is a New York state resident residing in New York County.

III. FACTS

3. On or about August 14, 2012, the Division, as part of an ongoing investigation, issued lawfully authorized subpoenas for the production of documents (the subpoenas are referred to herein as the “August 14 Subpoenas” or individually as “August 14 Subpoena”) to Cognata, his sister, Dominique Cognata, and other relevant parties. The records sought in the subpoenas included in part “trading cards and order tickets used in the trading of silver or gold futures or silver or gold options on futures” from January 2008 to the receipt of the subpoena and all communications, including emails and instant messages with certain individuals relating to his trading of silver or gold futures or silver or gold options on futures.

4. On August 27, 2012, counsel for Cognata’s sister, who was subsequently retained as co-counsel by Cognata, notified Commission staff via voicemail that Cognata and his sister would be invoking their “privilege” and not producing documents. Cognata’s sister’s counsel also provided staff a letter dated August 29, 2012, indicating that “[Cognata’s sister] and Dominick Cognata invoke their privilege...under the Fifth Amendment as to the material sought” in the August 14 Subpoenas. That same counsel also reiterated this position in subsequent written correspondence.

5. During a telephone call on August 31, 2012, Cognata’s counsel confirmed that Cognata was invoking his Fifth Amendment privilege in response to the August 14 Subpoena.

6. After further communications between staff and the attorneys for Cognata and his sister, staff sent a letter to Cognata’s counsel dated January 31, 2013 (“January 31 Letter”), confirming its understanding that Cognata did not intend to produce any responsive documents

called for by the August 14 Subpoena nor make responsive documents available for inspection to CFTC staff pursuant to Commission Regulations 1.31 and 1.35 and Section 4g of the Commodity Exchange Act. Staff received no response to this letter.

7. On July 26, 2013, staff sent a letter to Cognata's attorney ("July 26 Letter") stating that "Mr. Cognata has not provided a valid basis for his failure to produce documents in response to the August 14 Subpoena" and that the "Fifth Amendment privilege against self-incrimination does not protect against the production of records that are required to be kept in connection with the voluntary participation in a regulated activity." The July 26 Letter further stated that as a result of Cognata's ongoing failure to produce requested documents that are required to be maintained under Section 4g of the Commodity Exchange Act (the "Act"), "Cognata remains in violation of the Act and the regulations promulgated thereunder."

8. Also on July 26, 2013 staff issued a subpoena for Cognata to testify in connection with the Division's investigation.

9. On August 19, 2013, Cognata appeared before Division staff to testify but refused to answer questions relating to his trading activities or his failure to comply with the Division's subpoena. Cognata testified that on the advice of counsel, he was asserting his Fifth Amendment privilege against self-incrimination.

10. Cognata did testify, however, that he received the Division's August 14 Subpoena. Counsel for Cognata also stated on the record that he had previously discussed the Division's July 26 Letter with Cognata.

11. During the course of the testimony, staff showed and read to Cognata the July 26 Letter which stated that the Fifth Amendment privilege against self-incrimination did not apply to records made and maintained pursuant to a valid regulatory regime, such as the documents

required to be kept, maintained and produced under Section 4g of the Act and Commission Regulations 1.31 and 1.35. Cognata was further advised during his testimony that violations of Section 4g of the Act and Commission Regulations 1.31 and 1.35 “could subject [him] to certain sanctions, disqualifications, and/or penalties.”

12. To date, Cognata has failed to produce any documents responsive to the August 14 subpoena and/or the January 31 or July 26 Letters.

**IV. VIOLATIONS OF SECTION 4g OF THE ACT AND
COMMISSION REGULATIONS 1.31 AND 1.35**

COUNT I

13. Paragraphs 1 through 12 are realleged and incorporated herein by reference.

14. Cognata violated Section 4g of the Act and Commission Regulations 1.31(a) and 1.35(a) by failing to comply with a lawfully issued subpoena demanding production of books and records, including trading cards and order tickets, relating to his trading of futures or options on futures.

15. Under Section 4g of the Act, Cognata, as a Commission-registered COMEX floor broker, is required to (1) make such reports as are required by the Commission regarding, among other things, his own transactions and transactions for customers; (2) keep books and records pertaining to such transactions in the form and manner required by the Commission; and (3) keep such books and records “open to inspection” by Commission representatives.

16. Commission Regulation 1.35(d) mandates that members of contract markets prepare trading cards or similar records documenting their trades of any commodity for future delivery or commodity option on or subject to the rules of such contract market. Commission Regulation 1.35(a) mandates that a member of a contract market must maintain and produce for inspection

required records such as trading cards and order tickets for inspection and furnish true and correct information and reports when and as requested by an authorized representative of the Commission.

17. Commission Regulation 1.31(a) mandates, in pertinent part, that all books and records required to be kept by the Act be “open to inspection” by any representative of the Commission and provided to such representative “upon the representative’s request.” Also, and significantly, Regulation 1.31(a)(2) requires that when requested by a Commission representative, either the originals or copies of such records “shall be provided promptly.”

18. Over one year has passed since the Division made its initial demand for the records in question.

19. Cognata’s failure to produce such documents in a timely fashion, much less a complete refusal to do so, constitutes a violation of Section 4g of the Act and Commission Regulations 1.31(a) and 1.35(a).

V.

By reason of the forgoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute public administrative proceeding to determine whether the allegations set forth in Part I, II, III, and IV above are true, and if so, whether an appropriate order should be entered in accordance with Sections 6(c) and 6(d) of the Act, 7 U.S.C. Section 9 and Section 13b, imposing the following sanctions:

- A. Directing the Respondent to cease and desist from violating the provisions of the Act and regulations set forth herein; and
- B. Assessing a civil monetary penalty of not more than the higher of \$140,000 or triple the monetary gain against the Respondent for each violation of the Act or Regulations.

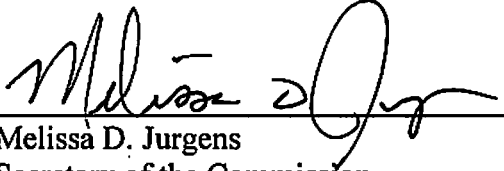
VI.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the allegations set forth in Section IV above be held before an Administrative Law Judge, in accordance with the Commission's Rule of Practice under the Act ("Rules"), 17 C.F.R. Section 10.1, at a time and place to set as provided by Section 10.61 of the Rules, 17 C.F.R. Section 10.61, and that all post hearing procedures shall be conducted pursuant to Section 10.81 through 10.107 of the Rules 17 C.F.R. Section 10.81 through 10.107.

IT IS FURTHER ORDERED that the Respondent shall serve and file an Answer to the allegations made against such respondent in paragraphs 1 through 19 of this complaint within twenty (20) days after service, pursuant to Section 10.32 of the Rules, 17 C.F.R Section 10.23 and pursuant to Section 10.12(a) of the Rules, 17 C.F.R Section 10.12(a), shall serve two copies of such Answer and any documents filed in this proceeding upon K. Brent Tomer, Trial Attorney, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, New York 1005. If the respondent fails to file the required Answer or fails to appear at a hearing after being duly notified, such party shall be deemed in default and the proceeding may be determined against the respondent upon consideration of the Complaint, the allegations of which may be deemed true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served on respondent personally or be registered or certified mail, pursuant to Section 10.22 of the Commission Rule, 17 C.F.R Section 10.22. In the absence of an appropriate waiver no officer or employee of the Commission engaged in the performance of investigative or prosecutorial functions in this or any factually related proceedings will be permitted to participate or advice in

the decision of this matter except as a witness or counsel in proceeding held pursuant to this notice.



Melissa D. Jurgens
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 30, 2013