UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:	CFTC Docket No. 12-09
D.E. Shaw & CO. L.P.	**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 D.E. Shaw & Co. L.P. ("DE Shaw" or "Respondent") has violated Section 4a(b) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 6a(b) (2006), and Commission Regulation 150.2, 17 C.F.R. § 150.2 (2010). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent has engaged in the violations as 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, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings herein, Respondent consents to the entry 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") and acknowledges service of this Order.[1]

[1] Respondent 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 Respondent does not consent to the use of the Offer, or the findings in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does

III.

The Commission finds the following:

A. SUMMARY

On April 1, 2010, Respondent had a position in soybean futures contracts that exceeded the single month speculative position limit for that contract set forth in Commission Regulation 150.2. Similarly, on June 18, 2010, Respondent had a position in corn futures contracts that exceeded the single month speculative position limit for that contract set forth in Commission Regulation 150.2. In exceeding the position limits for these futures contracts on these two days, Respondent violated Section 4a(b) of the Act, 7 U.S.C. § 6a(b) (2006), and Commission Regulation 150.2, 17 C.F.R. § 150.2 (2010).

B. RESPONDENT

D.E. Shaw & Co. L.P. is a commodity pool operator that is exempt from registration under Commission Regulation 4.13(a)(4), 17 C.F.R. § 4.13(a)(4) (2010). DE Shaw's principal place of business is in New York, New York.

C. FACTS

Commission Regulation 150.2 sets forth the speculative position limit levels for soybean and corn futures contracts, including the position limits for the spot month, single month and all-months. The single month contract limit is 6,500 for soybean futures contracts and 13,500 for corn futures contracts.

On April 1, 2010, Respondent held a short position of 9,894 May 2010 soybean futures contracts. That position exceeded the single month speculative limit of 6,500 for soybean futures by 3,394 contracts. On June 18, 2010, Respondent held a short position of 13,657 December 2010 corn futures contracts. That position exceeded the single month speculative limit of 13,500 for corn futures by 157 contracts.

On each of these two occasions Respondent identified that it had unintentionally exceeded Commission position limits and reduced the size of its futures contract positions on or before the next trading day and before receiving notification of the violations, so that its positions were below the single month limits. Specifically, on April 5, 2010, Respondent purchased 331 May 2010 soybean futures contracts and on June 21, 2010 Respondent purchased 84 December 2010 corn futures contracts to reduce its positions below the single month limits.

Respondent 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.

D. LEGAL DISCUSSION

Section 4a(b) of the Act provides, in relevant part, that it shall be unlawful for any person:

> (2) directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market...in excess of any position limit fixed by the Commission for or with respect to such commodity.

7 U.S.C. § 6a(b) (2006). Similarly, Commission Regulation 150.2 states:

> No person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery . . . in excess of [the limits contained in the Regulation].

17 C.F.R. § 150.2 (2010). The Commission does not need to establish scienter – i.e., intent to exceed position limits – in order to prove a violation. *CFTC v. Hunt*, 591 F.2d 1211, 1218 (7th Cir. 1979); *Saberi v. CFTC*, 488 F.3d 1207, 1212 (9th Cir. 2007). The Act "unambiguously imposes liability" for violations of position limits. *Saberi*, 488 F.3d at 1212 n.4 (rejecting trader's contention that the Division was required to prove that he intended to violate the speculative position limits in frozen pork bellies futures set forth in CME Rule 8032.E) (citing *Hunt*, 591 F.2d at 1218).

By holding speculative position limits for soybean futures on April 1, 2010 and corn futures on June 18, 2010 in excess of the position limits fixed by Commission Regulation 150.2, Respondent violated Section 4a(b) of the Act and Commission Regulation 150.2.

IV.

FINDING OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Section 4a(b) of the Act, 7 U.S.C. § 6a(b) (2006), and Commission Regulation 150.2, 17 C.F.R. §150.2 (2010).

V.

OFFER OF SETTLEMENT

Respondent has submitted an Offer in which it, without admitting or denying the findings and conclusions herein: acknowledges receipt of service of this Order; admits the jurisdiction of the Commission with respect to all matters set forth in this Order; and waives the filing and service of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer, any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2011), relating to, or arising from, this proceeding, and any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, §8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding.

Respondent stipulates that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer. Respondent consents to the Commission's issuance of this Order, which makes findings by the Commission that Respondent violated Section 4a(b) of the Act, 7 U.S.C. § 6a(b) (2006) and Commission Regulation 150.2, 17 C.F.R. § 150.2 (2010); orders Respondent to cease and desist from violating the Section 4a(b) of the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010) ("Dodd-Frank Act"), to be codified at 7 U.S.C. § 6a(b), and Commission Regulation 150.2, 17 C.F.R. §150.2 (2011); orders Respondent to pay a civil monetary penalty in the amount of One Hundred Forty Thousand Dollars ($140,000) within ten (10) days of the date of the entry of this Order; and orders Respondent to comply with the conditions and undertakings consented to in the Offer and as set forth in this Order.

Upon consideration, the Commission has determined to accept the Respondent's Offer.

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondent shall cease and desist from violating Section 4a(b) of the Act, as amended by the Dodd-Frank Act, to be codified at 7 U.S.C. § 6a(b), and Regulation 150.2, 17 C.F.R. §150.2 (2011);

B. Respondent shall pay a civil monetary penalty in the amount of One Hundred Forty Thousand Dollars ($140,000) within ten (10) days of the date of the entry of this Order. If this civil monetary penalty is not paid within ten (10) days of the date of the entry of this Order, then post-judgment interest shall accrue commencing 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. Respondent shall pay its civil monetary penalty 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 by other than electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission

Division of Enforcement
ATTN: Accounts Receivables --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone 405-954-5644

If payment by electronic funds transfer is chosen, Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the civil monetary penalty with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent shall simultaneously submit copies of the cover letter and the form of payment to: (1) Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; and (2) Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address; and

C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

Actions or Public Statements

Respondent agrees that neither it nor any of its successors or assigns, nor its agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any finding or conclusion in this Order or creating, or tending to create, the impression that the 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 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.

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

By the Commission.

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

Dated: February 22, 2012