

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

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Office of  
Proceedings

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**In the Matter of**  
  
**Christopher T. Foufas,**  
  
**Respondent.**  
  
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)  
) **CFTC Docket No: 12-28**  
)  
) **ORDER INSTITUTING PROCEEDINGS**  
) **PURSUANT TO SECTIONS 6(c) AND 6(d)**  
) **OF THE COMMODITY EXCHANGE**  
) **ACT, AS AMENDED, MAKING**  
) **FINDINGS AND IMPOSING REMEDIAL**  
) **SANCTIONS**  
)

**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from May 2009 to at least October 2010 (the “Relevant Period”), Respondent Christopher T. Foufas (“Foufas” or “Respondent”) violated Section 4b(a) of the Commodity Exchange Act (“Act”), to be codified at 7 U.S.C. § 6b(a) as well as Commission Regulation 1.38, 17 C.F.R. § 1.38 (2011). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Foufas engaged in the violations set forth herein, and to determine whether an order shall 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 the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.<sup>1</sup>

<sup>1</sup> Respondent consents to the entry of this Order and 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 or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

### III.

The Commission finds the following:

#### A. SUMMARY

Between May 2009 and October 2010, Foufas, a floor broker in the trading pit of the Chicago Mercantile Exchange Group's ("CME") Standard & Poor's 500 Stock Price Index futures contract ("S&P 500"), indirectly traded opposite his customer orders in violation of Section 4b(a) of the Act. Foufas executed these transactions with two separate accommodating traders on eleven instances in 2009 and 2010.

On each of these referenced instances, Foufas filled his customer's order opposite an accommodating trader. Immediately afterward, Foufas traded on behalf of his personal account opposite the same trader. Both the buy and sell trades in each of these "trade sequences" were executed at the same trade price within seconds of one another.

By this conduct, Foufas willfully and knowingly, and without prior consent of his customers, indirectly took the other side of his customers' trades, in violation of Section 4b(a) of the Act. By engaging in this conduct, Foufas also engaged in noncompetitive trades in violation of Commission Regulation 1.38(a).

#### B. RESPONDENT

Foufas is a registered floor broker in the CME's S&P 500 trading pit. He simultaneously trades for customers as well as for his own account. He has been registered with the Commission since 1996.

#### C. FACTS

Between May 2009 and October 2010, Foufas profited from indirectly trading opposite his customers, and then offsetting these positions in the S&P 500 pit or on the CME's electronic trading platform, Globex ("Globex"). On eleven occasions during this period, Foufas, while filling customer orders in the S&P 500 trading pit, indirectly took the opposite side of his customers' orders for his own account through noncompetitive round-turn trades with accommodating traders. This practice is also known as "indirect bucketing."<sup>2</sup>

The indirect buckets exhibited the following trading pattern or configuration: Foufas noncompetitively purchased and sold the same month of the S&P500 contract, at the same price at or about the same time, opposite the same accommodating trader. One side of Foufas' trades was for a customer and the other side was for Foufas' own account. As to the accommodating

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<sup>2</sup> "Bucketing" is defined by the Commission as "directly or indirectly taking the opposite side of a customer's order into a broker's own account or into an account in which a broker has an interest, without open and competitive execution of the order on an exchange." The CFTC Glossary ([http://www.cftc.gov/ConsumerProtection/EducationCenter/CFTCGlossary/glossary\\_b](http://www.cftc.gov/ConsumerProtection/EducationCenter/CFTCGlossary/glossary_b) 2012).

traders, both the purchase and sale were for their own accounts. This practice permitted Foufas to establish a position for his own account without competitive execution.

On eleven occasions, Foufas knowingly engaged in indirect bucketing. Specifically, on May 29, and July 2, 2009 as well as February 23, March 23, 24, and 26, September 28 and 30, and October 4, 6, and 8, 2010, Foufas indirectly traded opposite his customers' orders with one of two accommodating traders. On each occasion, Foufas filled a customer order with an accommodating trader and took a portion of the order back for Foufas' personal account.

The May 29, 2009 trades are illustrative of Foufas' conduct in regard to the first accommodating trader. At or about 2:56:06 that day, Foufas received a customer order to buy S&P 500 contracts. At 3:00:44 PM, Foufas executed part of that customer order by buying fifty S&P 500 contracts from an accommodating trader at a price of 924.00. About a second later, at 3:00:45, Foufas sold ten contracts back to the same accommodating trader for Foufas' personal account at the same price of 924.00. Foufas earned a profit of \$6,400 on this sale of ten contracts opposite his customer, because Foufas had earlier, bought the equivalent number of contracts on Globex at prices ranging from 921.25 to 921.50.

Foufas engaged in indirect bucketing of customer orders on seven occasions with the first accommodating trader. The dates, type of trade, number of contracts, time brackets, and prices for these trades are detailed in the following chart, listing the trades from Foufas' perspective:

<b>Date</b>	<b>Trade Type</b>	<b>Amount (Contracts)</b>	<b>Time Bracket</b>	<b>Price</b>
05/29/09	Buy (customer)	50	3:00:00/3:15:00	924.00
05/29/09	Sell (personal)	10	3:00:00/3:15:00	924.00
07/02/09	Sell (customer)	39	3:00:00/3:15:00	893.20
07/02/09	Buy (personal)	10	3:00:00/3:15:00	893.20
02/23/10	Buy (customer)	100	3:00:00/3:15:00	1094.30
02/23/10	Sell (personal)	20	3:00:00/3:15:00	1094.30
03/24/10	Sell (customer)	60	3:00:00/3:15:00	1163.50
03/24/10	Buy (personal)	10	3:00:00/3:15:00	1163.50
03/26/10	Sell (customer)	24	9:00:00/9:15:00	1165.30
03/26/10	Buy (personal)	4	9:00:00/9:15:00	1165.30
09/28/10	Sell (customer)	40	3:00:00/3:15:00	1141.80
09/28/10	Buy (personal)	10	3:00:00/3:15:00	1141.80
09/30/10	Buy (customer)	30	8:30:00/8:45:00	1147.00
09/30/10	Sell (personal)	10	8:30:00/8:45:00	1147.00

The March 23, 2010 trades are representative of Foufas' similar conduct with the second accommodating trader. At or about 2:07:18 PM that day, Foufas executed a customer order by selling five S&P 500 contracts to another accommodating trader at a price of 1165.80. Less than a second later, Foufas bought two S&P 500 contracts from the same accommodating trader, for Foufas' personal account, at the same price of 1165.80. Foufas ultimately earned a profit on this purchase of two contracts opposite his client because Foufas was able to sell the equivalent number of contracts on Globex, shortly thereafter, for a price of 1166.

Foufas engaged in indirect bucketing of customer orders on four occasions with the second accommodating trader. The dates, type of trade, number of contracts, time brackets, and prices for these trades between Foufas and the second accommodating trader are detailed in the following chart, listing the trades from Foufas' perspective:

Date	Trade Type	Amount (Contracts)	Time Bracket	Price
03/23/10	Sell (customer)	5	2:00:00/2:15:00	1165.80
03/23/10	Buy (personal)	2	2:00:00/2:15:00	1165.80
10/04/10	Sell (customer)	5	1:15:00/1:30:00	1128.20
10/04/10	Buy (personal)	2	1:15:00/1:30:00	1128.20
10/06/10	Buy (customer)	4	12:00:00/12:15:00	1151.80
10/06/10	Sell (personal)	2	12:00:00/12:15:00	1151.80
10/08/10	Buy (customer)	14	1:00:00/1:15:00	1158.30
10/08/10	Sell (personal)	4	1:00:00/1:15:00	1158.30

#### IV.

#### LEGAL DISCUSSION

Section 4b(a) of the Act makes it unlawful for any person to “fill an order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of the other person to become the buyer in respect to any selling order of the other person, or become the seller in respect to any buying order of the other person, if the order is either represented by the person as an order to be executed, or is required to be executed, on or subject to the rules of a designated contract market unless the order is executed in accordance with the rules of the designated contract market.”

A floor broker “buckets” a customer’s order, when that broker trades “opposite the order for the broker’s own account or for an account in which the broker has an interest.” *Reddy v. CFTC*, 191 F.3d 109, 115 (2nd Cir. 1999). “Indirect bucketing’ occurs when a broker, aided by an accommodating trader, trades opposite his own customer while appearing to trade opposite the accommodator.” *Id. Accord In re Gorski*, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,726 at 56,068 n.15 (CFTC March 24, 2004) (“In an indirect bucket, a floor broker trades against his customer in a non-competitive transaction. The opposite trader, often called the accommodator, assists the floor broker by making it appear that the customer traded with him, rather than with the floor broker.”). The practice is illegal because the customer’s order is not executed competitively and the futures market’s purpose of aiding price discovery is frustrated. In addition, “because the transaction is arranged in a manner that permits the opposite trader to buy and sell the same month of the same futures contract at the same or similar price, the accommodating trader is able to negate market risk while breaking even or earning a profit.” *In re Gorski*, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,726 at 56,068 n.15.

Regulation 1.38 requires that “[a]ll purchases and sales of any commodity for future delivery, and of any commodity option, on or subject to the rules of a contract market shall be executed openly and competitively by open outcry or posting of bids and offers or by other equally open and competitive methods, in the trading pit or ring or similar place provided by the

contract market, during the regular hours prescribed for trading in such commodity or commodity option.” “The purpose of this requirement is to insure 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 the futures contracts.” S. REP. No. 93-1131, 93d Cong., 2d Sess. 16-17 (1974). 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). By engaging in indirect bucketing of his customers’ orders with accommodating traders, Foufas engaged in noncompetitive trading in violation of Regulation 1.38.

“The Division must prove intent to establish a violation of 4b or 4c of the Act.” *Reddy*, 191 F.3d at 119. Regulation 1.38(a) also incorporates a scienter requirement. *In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,651 (CFTC Jan. 25, 1991). “[I]nferences arising from circumstantial evidence” are sufficient to prove that the proposed respondents acted with scienter. See *In re Buckwalter*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,995 at 37,686.

## V.

### FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Foufas violated Section 4b(a) of the Act and Regulation 1.38.

## VI.

### OFFERS OF SETTLEMENT

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

- A. Acknowledges receipt of service of this Order.
- B. Admits the jurisdiction of the Commission with respect to all the 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 he 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 et seq. (2011), relating to, or arising from, this proceeding;
  7. any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and
  8. any claims 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.
- 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.
- 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 Foufas violated Section 4b(a) of the Act and Regulation 1.38;
  2. orders Foufas to cease and desist from violating Section 4b(a) of the Act and Regulation 1.38;
  3. orders Foufas to pay a civil monetary penalty in the amount of seventy-five thousand dollars (\$75,000), plus post-judgment interest, within ten (10) days of the date of the entry of this Order;
  4. orders that Foufas' registration as a floor broker with the Commission shall be suspended for a period of two (2) months, commencing from the date this Order is entered, during which time all registered entities (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a), shall refuse Foufas floor trading privileges;
  5. orders that Foufas is prohibited, for a period of eighteen (18) months, commencing on the date of the Order from, directly or indirectly, filling or executing orders for customers on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a); and
  6. orders Foufas to comply with the conditions and undertakings consented to in the Offer and as set forth in Paragraph E of Part VII of this Order.

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

## VII.

### ORDER

#### Accordingly, IT IS HEREBY ORDERED THAT:

- A. Foufas shall cease and desist from violating Section 4b(a) of the Act, to be codified at 7 U.S.C. § 6b(a) and Regulation 1.38, 17 C.F.R. § 1.38 (2011).
- B. Foufas shall pay a civil monetary penalty in the amount of seventy-five thousand dollars (\$75,000), plus post-judgment interest, within ten (10) days of the date of the entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue 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 the Order pursuant to 28 U.S.C. § 1961 (2006). Respondent shall pay his 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 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:

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 is to be made by electronic funds transfer, Foufas shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Foufas shall accompany payment of the penalty with a cover letter that identifies him and the name and docket number of this proceeding. Foufas 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 21<sup>st</sup> Street, NW, Washington, D.C. 20581.

- C. Foufas' registration as a floor broker with the Commission shall be suspended for a period of two (2) months, commencing from the date this Order is entered, during which time all registered entities (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a), shall refuse Foufas floor trading privileges.
- D. Foufas is prohibited, for a period of eighteen (18) months, commencing on the date of the Order from, directly or indirectly, filling or executing orders for customers on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a).

- E. Foufas, and his successors and assigns shall comply with the following undertakings set forth in his Offer:
1. During the two-month period that Foufas' registration is suspended, Foufas shall not apply for registration or claim exemption from registration with the Commission in any capacity, nor engage in any activity requiring such registration or exemption with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2011);
  2. Public Statements: Foufas agrees that neither he nor any of his agents or employees under his 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. Foufas shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.
- F. Partial Satisfaction: Foufas understands and agrees that any acceptance by the Commission of partial payment of his CMP Obligation shall not be deemed a waiver of his 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.
- F. Change of Address/Phone: Until such time as Foufas satisfies in full his CMP Obligation as set forth in this Consent order, he shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

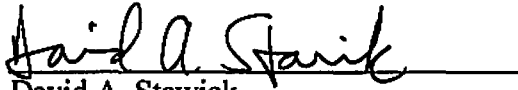
Respondent acknowledges that failure to comply with the Order shall constitute a violation of the Order and may subject him to administrative or injunctive proceedings, pursuant to the Act.

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

Dated: July 26, 2012



By the Commission.

A handwritten signature in black ink, appearing to read "David A. Stawick", is written over a solid horizontal line.

David A. Stawick

Secretary of the Commission

Commodity Futures Trading Commission