UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Morgan Stanley Capital Group, Inc.

Respondent.

CFTC Docket No. 10-10

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

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I.

The Commodity Futures Trading Commission ("Commission" or "CFTC") has reason to believe that, on February 6, 2009, Morgan Stanley Capital Group, Inc. ("MSCGI") violated Section 9(a)(4) of the Commodity Exchange Act ("CEA"), as amended, 7 U.S.C. § 13(a)(4) (2006). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether MSCGI 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 this administrative proceeding, MSCGI has submitted an Offer of Settlement ("Offer") that the Commission has determined to accept. Without admitting or denying any of the findings herein, MSCGI consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act and Making Findings and Imposing Remedial Sanctions ("Order") and acknowledges service of this Order.[1]

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[1] MSCGI 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 MSCGI 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 MSCGI 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.

III.

The Commission finds the following:

A. Summary

On February 6, 2009, in connection with a New York Mercantile Exchange ("NYMEX" or "the Exchange") Trade at Settlement ("TAS") block trade of crude oil futures contracts, a trader at MSCGI requested that a third party broker report the trade after the close of trading. The broker reported the trade after the close. These actions concealed the occurrence of the trade from the NYMEX, contrary to a NYMEX Rule requiring that the buyer and seller ensure that trades are reported to the Exchange within five minutes of execution.

Because the MSCGI trader undertook his actions within the scope of his employment, pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2009), MSCGI is liable for the employee trader's acts in violation of Section 9(a)(4) of the CEA. Accordingly, MSCGI violated Section 9(a)(4) of the CEA, 7 U.S.C. § 13(a)(4) (2006).

B. Respondent

MSCGI is in the business of trading commodity futures, derivatives and physicals. It is a non-clearing member of the NYMEX. MSCGI is not registered with the Commission in any capacity.

C. Facts

In early February 2009, a third party broker, acting for its customer, and a MSCGI trader discussed an opportunity for MSCGI to act as counterparty in the purchase of a block of March 2009 crude oil futures contracts and the sale of a block of a similar amount of April 2009 contracts (commonly known as a spread position) on the NYMEX. The price was to be determined later by the market closing price, an arrangement known as a "TAS" block trade.

Prior to the trade being finalized, the MSCGI trader requested that the third party broker report the TAS block trade after the close of trading. The third party broker agreed to this arrangement. MSCGI and the third party broker entered into the TAS block trade at or around noon on February 6, 2009. The third party broker reported the TAS block trade after the closing period. These actions concealed the occurrence of the trade from the NYMEX, contrary to NYMEX Rule 6.21C(6), which provides that the "buyer and seller must ensure that each block trade is reported to the Exchange within five minutes of the time of execution."

CFTC staff investigated the late reporting and MSCGI cooperated with the CFTC's investigation.

D. Legal Discussion

Section 9(a)(4) of the CEA, 7 U.S.C. § 13(a)(4) (2006), prohibits persons "willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, or futures association designated or registered under [the CEA] acting in furtherance of its official duties under [the CEA]." The concealment of a material fact – in this case the execution of the TAS block trade – required to be disclosed to the NYMEX acting in furtherance of its official duties is a violation of this provision.

MSCGI's trader violated Section 9(a)(4) of the CEA, 7 U.S.C. § 13(a)(4) (2006), when the trader requested that the third party broker not report the TAS block trade to the NYMEX until after the close, contrary to NYMEX Rule 6.21C(6), which required such reporting within five minutes of trade execution. Because MSCGI's employee trader undertook his actions within the scope of his employment, pursuant to Section 2(a)(1)(B) of the CEA, 7 U.S.C. § 2(a)(1)(B) (2006), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2009), MSCGI is liable for the trader's violation of Section 9(a)(4) of the CEA.

IV.

OFFER OF SETTLEMENT

MSCGI has submitted the Offer in which it, without admitting or denying the findings herein:

A. Acknowledges receipt of service of this Order;

B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order;

C. 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 consideration of the Offer; 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 Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq*. (2009), relating to, or arising from, this proceeding; 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; and 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;

D. Stipulates that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which MSCGI has consented; and

E. Consents, solely on the basis of the Offer, to entry of this Order that:

    1. makes findings by the Commission that MSCGI violated Section 9(a)(4) of the CEA, 7 U.S.C. § 13(a)(4) (2006);

    2. orders MSCGI and its successors and assigns to cease and desist from violating Section 9(a)(4) of the CEA, 7 U.S.C. § 13(a)(4) (2006);

3. orders MSCGI to pay a civil monetary penalty in the amount of fourteen (14) million dollars, plus post-judgment interest, within five (5) days of the date of the entry of this Order. Post-judgment interest shall accrue beginning six (6) days after 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; and

4. orders MSCGI and its successors and assigns to each comply with the undertakings consented to in the Offer and set forth below in Part VI of this Order.

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

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that MSCGI violated Section 9(a)(4) of the CEA, 7 U.S.C. § 13(a)(4) (2006).

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. MSCGI and its successors and assigns shall cease and desist from violating Section 9(a)(4) of the CEA, 7 U.S.C. § 13(a)(4) (2006);

B. MSCGI shall pay a civil monetary penalty in the amount of fourteen (14) million dollars, plus post-judgment interest, within five (5) days of the date of the entry of this Order. Post judgment interest shall accrue beginning six (6) days after 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. MSCGI shall pay this civil monetary penalty by making 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: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone 405-954-6569

If payment by electronic transfer is chosen, MSCGI shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. MSCGI shall accompany payment of the civil monetary penalty with a cover letter that identifies MSCGI and the name and docket number of this proceeding. MSCGI shall simultaneously submit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2) (2006), if these amounts are not paid in full within fifteen (15) days of the due date, MSCGI shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty and disgorgement amount with interest thereon to the date of the payment has been made; and

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

1. MSCGI shall administer an enhanced training program to be given on at least an annual basis for at least the next three years to all MSCGI employees who, as part of their employment at MSCGI, trade commodity futures and related option contracts ("MSCGI Traders"), concerning relevant trading rules of each relevant exchange and of the Commission (including, such rules relating to the reporting of trades) (the "Trading Rules"), and shall make participation in such training a mandatory condition of employment for such persons;

2. MSCGI's Legal and Compliance Division shall notify MSCGI Traders of significant new and modified Trading Rules on a timely basis for at least the next three years;

3. Within 90 days, MSCGI's Legal and Compliance Division shall implement enhanced surveillance of TAS block trades on the NYMEX, such enhanced surveillance remaining in place for at least the next three years.

4. Neither MSCGI nor any of its agents or employees under its 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 MSCGI's (i) testimonial obligations; or (ii) right to take positions in other matters to which the Commission is not a party. MSCGI shall take all steps necessary to ensure that all of its agents and employees under its authority or control understand and comply with this undertaking; and

5. MSCGI shall continue to cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement in this proceeding and in

any civil or criminal investigation, litigation, or administrative matter related to the subject matter of this proceeding. As part of such cooperation with the Commission, MSCGI agrees to:

a. Preserve all records that have been previously identified by MSCGI to the staff of the Commission as relevant to the subject matter of this proceeding (including records copies of which have been previously provided to the staff of the Commission in connection with the investigation that led to this proceeding), including but not limited to audio files, e-mails, BAM forms, and trading records, for a period of three (3) years from the date of this Order;

b. Comply fully, promptly, completely, and truthfully with any inquiries or requests for information or documents;

c. Provide authentication of documents and other evidentiary material;

d. Produce any current (as of the time of the request) officer, director, employee, or agent of MSCGI, regardless of the individual's location and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation; and

e. Lawfully assist in locating and contacting any prior (as of the time of the request) officer, director, employee, or agent of MSCGI.

MSCGI and its successors and assigns shall take all steps necessary to ensure that all of its agents and employees under its authority and control understand and comply with this undertaking.

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

By the Commission.

David A. Stawick

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

Dated: April 29, 2010