UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of	)	
Michael Pucciarelli and Badge Trading LLC,	)	**CFTC Docket No. 16-12**
Respondents.	)	

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 from in or about January 2010 through August 2012 (the "Relevant Period"), Michael Pucciarelli ("Pucciarelli") and Badge Trading LLC ("Badge Trading") (collectively, "Respondents") violated Section 4c(a) of the Commodity Exchange Act ("CEA" or "Act"), 7 U.S.C. § 6c(a), and Commission Regulation 1.38, 17 C.F.R. § 1.38. Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents 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 an administrative proceeding, Respondents have submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent 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] Respondents consent 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 Respondents do 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 in a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of the Offer or this Order, or the

III.

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Michael Pucciarelli, a Director of Purchasing for a coffee roasting business, executed numerous "non-bona fide" exchange for physicals transactions ("EFPs"). These EFPs were entered into noncompetitively off exchange and then later cleared by ICE Futures U.S. and ICE Clear U.S., Inc. (collectively, "ICE"). Pucciarelli's EFPs were non-bona fide and violated exchange rules because the EFPs lacked a corresponding and related cash position executed by the parties to the transaction. Specifically, Pucciarelli purchased green coffee beans from various importers on behalf of his employer, but then executed EFPs, substituting his personally owned company, Badge Trading, in the futures leg of the transaction. This structure secured advantageous prices for his personal company's futures trades.

B. RESPONDENTS

Michael Pucciarelli is a resident of Staten Island, New York. Badge Trading LLC is a New Jersey limited-liability corporation. During the Relevant Period, neither Pucciarelli nor Badge Trading was registered with the Commission in any capacity.

C. FACTS

Pucciarelli was Director of Purchasing for the coffee-roasting division of a coffee and tea company ("the Roasting Company"), a business division of a large food-services company. As Director of Purchasing, Pucciarelli was responsible for the Roasting Company's purchases of green coffee for certain of the Roasting Company's accounts. Pucciarelli frequently executed these green coffee purchases through EFPs that were cleared on ICE.

From January 2010 to August 2012, Pucciarelli engaged in numerous EFPs that were not bona fide because one of the counterparties for the futures leg, Badge Trading, did not itself engage in a physical coffee transaction, in violation of exchange rules. For each EFP executed by Pucciarelli on behalf of his wholly owned firm, Badge Trading, the physical leg consisted of the Roasting Company purchasing, and the green-coffee importer selling, the physical commodity. The futures leg consisted of Badge Trading selling (short), and the importer buying (long), the related futures contracts. On the same day that the Roasting Company's customer fixed the price of its coffee purchase, Pucciarelli would cause Badge Trading to purchase long futures contracts on the open market. Pucciarelli also would execute the physical and future legs of the EFPs with various importers. For the futures leg, Badge Trading would sell (go short) futures contracts that offset its separately purchased long position, but almost exclusively at the higher price (derived from the customer purchase price) at which he executed with importers on behalf of the Roasting Company, thereby securing a profit for Badge Trading. Each EFP would then be cleared with ICE.

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findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

IV.

LEGAL DISCUSSION

Section 4c(a) of the Act makes it unlawful for any person to enter into a futures transaction that:

> is, of the character of, or is commonly known to the trade as, a 'wash sale' or 'accommodation trade'; or (ii) is a fictitious sale; or (B) is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.

7 U.S.C. § 6c(a). Commission Regulation 1.38 generally requires all futures contracts to be executed openly and competitively, though as an exception permits transactions that are executed non-competitively so long as they accord with the applicable written rules of the contract market:

> All 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 by the contract market for trading in such commodity or commodity option: *Provided, however*, That this requirement shall not apply to transactions which are executed non-competitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission, specifically providing for the non-competitive execution of such transactions.

Commission Regulation 1.38(a) (italics in original).

"[I]llegitimate non-competitive trading is a form of fictitious sales." *In re Morgan Stanley & Co. LLC*, CFTC Dkt. No. 12-22, at *4 (June 5, 2012) (internal citations omitted). In particular, futures trades executed noncompetitively as part of exchanges for related positions, but not in accordance with the rules governing such transactions, are "fictitious sales" that result in non-bona fide prices being reported, in violation of Section 4c(a) of the Act and Regulation 1.38(a). *Id.* at *4-5.

Here, applicable ICE rules required that for cleared EFPs, one party must be both the buyer of the related position and seller of the futures contract, or seller of the related position and buyer of the futures contract. *See* ICE Futures U.S. Trading Rule 4.06(b)(i) (formerly Rule 4.12(a)(i)).[2] As described above, during the Relevant Period, Respondents entered into unlawful,

[2] ICE Futures U.S. Trading Rule 4.06(b)(i) states in relevant part:

> An EFRP Transaction shall consist of two discrete but related simultaneous transactions in which one party must be the buyer of (or the holder of the long market exposure associated with) the related position and seller of the corresponding Exchange contract, and the other party to the EFRP Transaction must be the seller of (or the holder of the short market exposure associated with) the related position and the buyer of the corresponding Exchange contract . . . .

non-completive EFPs that lacked related cash positions executed by the same parties as required by ICE rules to constitute valid EFPs. Accordingly, the trades constituted "fictitious sales" and resulted in non-bona fide prices being reported in violation of Section 4c(a) of the Act and Commission Regulation 1.38(a).

V.

FINDINGS OF VIOLATION

Based upon the foregoing, the Commission finds that: during the Relevant Period, Respondents violated Section 4c(a) of the Act and Commission Regulation 1.38.

VI.

OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

A. Acknowledge receipt of service of this Order;

B. Admit the jurisdiction of the Commission with respect to all 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. Waive:

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 Respondents may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), 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 (2015), relating to, or arising from, this proceeding;
7. any and all claims that Respondents 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

8. any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;

D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer;

E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:

1. makes findings by the Commission that, during the Relevant Period, Respondents violated Section 4c(a) of the Act and Commission Regulation 1.38;

2. orders Respondents to cease and desist from violating Section 4c(a) of the Act and Commission Regulation 1.38;

3. orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of two hundred eighty thousand dollars ($280,000), plus post-judgment interest, if the civil monetary penalty is not paid within thirty (30) days of the entry of this Order;

4. orders that Respondents are prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40), for a period of four years after the date of entry of this Order, and all registered entities shall refuse Respondents trading privileges; and

5. orders Respondents to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondents shall cease and desist from violating Section 4c(a) of the Act and Commission Regulation 1.38.

B. Respondents shall pay, jointly and severally, a civil monetary penalty of two hundred eighty thousand dollars ($280,000), plus post-judgment interest if the civil monetary penalty is not paid within thirty (30) days of the date of entry of this Order (the "CMP Obligation"). If the civil monetary penalty is not paid within thirty (30) days of the date of the entry of this Order, then post-judgment interest shall accrue on the CMP Obligation 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 this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondents shall pay the CMP Obligation 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
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondents and the name and docket number of this proceeding. The paying Respondents shall simultaneously transmit copies of the cover letter, a copy of this Order, and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. Respondents shall also simultaneously provide copies of these documents to the Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005.

C. Respondents are prohibited from, directly or indirectly, engaging in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40)), for a period of four years after the date of entry of this Order, and all registered entities shall refuse Respondents trading privileges for that period.

D. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: Respondents agree that neither Respondents nor any of Respondents' successors and assigns, agents or employees under Respondents' 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 Respondents' (i) testimonial obligations, or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of Respondents' agents and/or employees under Respondents' authority or control understand and comply with this agreement.

2. Commodity Interests: Respondents agree that Respondents shall not, for a period of four years after the date of entry of this Order, directly or indirectly:

    i. enter into any transactions involving "commodity interests" (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) for Respondents' own personal account(s) or for any account(s) in which Respondents have a direct or indirect interest;

    ii. have any commodity interests traded on Respondents' behalf;

    iii. control or direct the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;

    iv. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity interests;

    v. apply for registration or claim exemption from registration with the Commission in any capacity, and engage in any activity requiring such registration or exemption from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2015); and/or

    vi. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2015)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012) registered, required to be registered, or exempted from registration with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2015).

3. Cooperation with the Commission: Respondents shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or this settlement, or any current or future Commission investigation related thereto.

4. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of Respondents' obligation to make further payments pursuant to this Order, nor deemed a waiver of the Commission's right to seek to compel payment of any remaining balance.

5. Change of Address/Phone: Until such time as Respondents satisfy in full the CMP Obligation as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to Respondents' telephone number(s) and mailing address(es) within twenty (20) calendar days of the change.

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

By the Commission.

Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: April 5, 2016