UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Commodity Futures Trading Commission, **Plaintiff,** **v.** **Royal Bank of Canada,** **Defendant.**	**Case No. 12 Civ. 2497 (AKH/KNF)** **AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND FOR CIVIL MONETARY PENALTIES UNDER THE COMMODITY EXCHANGE ACT** **Jury Trial Demanded** **ECF Case**

I. SUMMARY

1. From at least June 2007 to May 2010, Defendant Royal Bank of Canada ("RBC") conducted a wash trading scheme of massive proportion by unlawfully trading hundreds of millions of dollars' worth of narrow based stock index futures ("NBI") and single stock futures ("SSF") contracts with two of its subsidiaries. RBC and the two subsidiaries pre-arranged the NBI and SSF transactions non-competitively between themselves and then executed the transactions as "block" trades on OneChicago, LLC ("OneChicago"), an electronic futures exchange in Chicago, Illinois. RBC's NBI and SSF trading activity accounted for the vast majority of OneChicago's volume in both products during the relevant period.

2. A small group of senior RBC personnel acting on RBC's behalf designed the NBI and SSF trading strategies and controlled the trading activity. The scheme was designed and orchestrated as part of RBC's strategy to realize certain lucrative Canadian tax benefits, which prior to and during the relevant period RBC sought to and did realize by holding certain public companies' stock, or "securities," in its Canadian and offshore trading accounts.

3. In each instance, RBC identified, and purchased or already held, securities that RBC believed would generate a tax benefit. Purportedly to offset risk from holding the tax-beneficial securities, RBC and a subsidiary would buy and sell opposite each other NBI or SSF futures contracts referencing the same securities. As a result of the futures trades, RBC and its respective subsidiary held futures positions that were equal and offsetting in size and price in the same contracts of the same delivery month. In almost every instance, RBC and its respective subsidiary expected that NBI futures contracts would periodically be "rolled", or effectively extended, for at least one year, and that SSF futures contracts would be settled by physical delivery of the underlying stock. Thus, RBC's futures trading was conducted in a riskless manner which ensured that the positions of each counterparty washed to zero, in disregard of the price discovery principles of the futures market, leaving RBC to reap large tax benefits.

4. RBC knew that the NBI and SSF transactions were riskless and intended them to be so, and knew and intended that its NBI and SSF transactions would and did achieve a wash result for RBC.

5. RBC gave these unlawful trades the appearance of being the result of independent decisions by its branches and subsidiaries to buy and sell futures contracts when, in fact, they were controlled by a small group of senior RBC personnel. RBC intentionally sought to negate, and did negate, price competition in its NBI and SSF transactions. RBC planned for its NBI and SSF trading strategies to exclude non RBC-affiliated entities and eliminate arm's-length bargaining between RBC and its subsidiaries. As a result, RBC traded almost exclusively with its subsidiaries at prices that were not determined by competitive market forces.

6. RBC's NBI and SSF transactions were, or were of the character of, wash sales and were fictitious sales, and therefore violated Section 4c(a) of the Commodity Exchange Act

(the "Act"), 7 U.S.C. § 6c(a) (2006). RBC's NBI and SSF transactions were also non-competitive and therefore violated Commission Regulation ("Regulation") 1.38(a), 17 C.F.R. § 1.38(a) (2011).

7. Further, from at least January 2005 to April 2010, RBC willfully falsified, concealed and covered up material facts, and made false statements and omitted to disclose material information to CME Group, Inc. ("CME Group"), which exercised the regulatory compliance function for OneChicago, concerning the trading scheme alleged herein. This conduct violated Section 9(a)(4) of the Act, as amended, 7 U.S.C. § 13(a)(4).

8. Plaintiff Commodity Futures Trading Commission (the "CFTC" or the "Commission") brings this action pursuant to Section 6c of the Act, to be codified at 7 U.S.C. § 13a-1, to enjoin RBC's violative acts and practices and to compel RBC's compliance with the Act. In addition, the CFTC seeks civil monetary penalties and such other equitable relief as this Court deems necessary or appropriate.

9. Unless restrained and enjoined by this Court, RBC is likely to engage in the acts and practices alleged in this Complaint, or in similar acts and practices, as described more fully below.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which provides that whenever it shall appear to the CFTC that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the CFTC may bring an action in the proper District Court of the United States against such person to enjoin such practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

11. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), because Defendant RBC transacts business in this District, and because the acts and practices in violation of the Act occurred within this District.

III. THE PARTIES

12. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, 7 U.S.C. §§ 1 et seq., and the regulations promulgated thereunder, 17 C.F.R. §§ 1.1 et seq.

13. Defendant Royal Bank of Canada is a Canadian bank and financial services firm headquartered in Toronto, Canada, with offices in New York, New York, and other cities in the United States and around the world. RBC engages in proprietary trading of on- and off-exchange derivative products, including on-exchange NBI and SSF contracts, through its branches, accounts and subsidiaries located in New York, London, Toronto, and the Caribbean. RBC has never been registered with the Commission in any capacity.

IV. FACTUAL BACKGROUND

A. The Market and Products

14. OneChicago LLC is the only domestic designated contract market ("DCM") that provides a marketplace for trading security futures products, including NBIs and SSFs. It is designated with the Commission as a board of trade pursuant to Sections 5 and 6(a) of the Act, 7 U.S.C. §§ 7 and 8(a) (2006), and is notice-registered with the Securities and Exchange Commission ("SEC") as a national securities exchange under Section 6(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78f(a), for the purpose of listing and trading security futures products. OneChicago is jointly owned by the CME Group, Inc., IB Exchange Corp., and the Chicago Board Options Exchange. Trades executed at OneChicago are cleared and settled by the Options Clearing Corporation or by Chicago Mercantile Exchange Inc. ("CME"). The CME

Group performed regulatory compliance for OneChicago from at least January 2005 to April 2010.

15. NBIs are cash-settled futures on custom stock indexes, as defined in Section 1a(25) of the Act, redesignated as Section 1a(35) pursuant to the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(35). At the expiration of an NBI contract, one party to the contract must pay the other party a sum of money equal to its gains resulting from any change in the contract price over the term of the contract. Alternatively, the contract counterparties can "roll" the contract, which means that, at the expiration of the futures contract, each party offsets its futures position by buying or selling NBI contracts and immediately establishes a new position in the next contract month and takes its respective cash gains or losses from the expired contract. NBI products offered by OneChicago are created at OneChicago's customers' requests.

16. An SSF is a futures contract on a single stock (as opposed to a stock index) that may be settled through delivery of the underlying security. At the expiration of the contract, the person who is "short" the SSF delivers the underlying stock to his counterparty, who is "long" the SSF, if he holds the contract at expiration. Section 1a(31) of the Act, redesignated as Section 1a(44) pursuant to the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a(44), defines the term "security future" as a contract for the sale or future delivery of a single security or of a narrow-based security index. Security futures are subject to joint regulation by the CFTC and the SEC under Section 2(a)(1)(D) of the CEA, 7 U.S.C. § 2(a)(1)(D) (2006).

17. The futures markets are price discovery markets that provide a centralized marketplace where traders can shift risk. Price discovery occurs through the open and competitive execution of trades on the centralized market. To protect the integrity of the market process, the Act and Regulations generally require trades to be executed openly and

competitively and prohibit trading practices that undermine the price discovery process such as wash sales and fictitious sales.

18. During the relevant time, OneChicago's rules permitted parties to enter into pre-arranged "block trade" transactions "outside the OneChicago System, at reasonable prices mutually agreed," subject to certain conditions. OneChicago's block trading rule contained a requirement that "[e]ach party to a Block Trade shall comply with all applicable Rules of the Exchange," including OneChicago Rule 604, which, in turn, prohibited "conduct in violation of the Applicable Laws," and thereby incorporated the Act's prohibition against wash sales, fictitious sales and non-competitive trading. OneChicago did not have a rule that expressly permitted block trading between affiliated parties such as those conducted between RBC and its subsidiaries.

B. Relevant RBC "Affiliates" and Business Group

19. RBC executed its NBI and SSF trades through two of its branches and one set of internal RBC accounts, opposite two RBC subsidiaries. The two branches were RBC Bahamas Branch ("Bahamas") and RBC Cayman Branch ("Cayman") (together, "Caribbean"), branches of RBC located in the Bahamas and Cayman Islands that were not stand-alone legal entities. The internal set of accounts, which also was not a stand-alone legal entity, was known as Canadian Transit ("RBC (Canadian Transit)") and housed in Toronto. The two subsidiaries were RBC Capital Markets Arbitrage S.A. ("CMA"), a Luxembourg-based subsidiary of RBC with offices in New York; and RBC Europe Limited ("RBC EL"), a United Kingdom-based bank subsidiary of RBC with offices in London.

20. During the relevant period, RBC compiled and reported its financial results on a consolidated basis. Profits and losses generated by the NBI and SSF trading activities of CMA,

RBC EL, RBC (Canadian Transit), Bahamas and Caymans were consolidated in the overall profits and losses of RBC for both internal and public financial reporting purposes.

21. RBC's Central Funding Group was an internal RBC group comprised of employees from multiple RBC businesses that was formed in or about 2007 to provide futures pricing for various RBC trading desks, among other tasks. During the relevant period, the Central Funding Group's employees worked in RBC offices around the world, including New York, London, Toronto, and the Caribbean.

22. During the relevant period, profits and losses from the trading activities of the internal Central Funding Group were ultimately consolidated for both internal and public financial reporting purposes in the overall profits and losses generated by RBC's other businesses.

C. Tax Benefits of RBC's Securities Positions

23. The NBI and SSF trades were conducted by RBC with its subsidiaries as part of a strategy to generate tax credits that RBC would apply against its Canadian taxes. These credits derived from taxes RBC paid on dividends on securities it owned that were issued by U.S. and Canadian companies. Two types of credits are relevant here.

24. First, RBC believed that under Canadian tax rules Canadian taxpayers were entitled to an offset against their Canadian taxes in an amount equal to the U.S. taxes they paid on dividend income received from owning securities issued by U.S. companies. Thus, as further described below, RBC's tax strategy contemplated that RBC, through its Caribbean branches, which were Canadian taxpayers, would hold certain U.S. securities on dividend dates to realize these tax credits. RBC conducted SSF trades between its Caribbean branches and RBC's subsidiary CMA to facilitate this tax strategy.

25. Second, RBC believed that under Canadian tax rules Canadian companies were entitled to an offset against Canadian taxes in an amount equal to Canadian taxes paid on dividend income from securities issued by other Canadian companies, as long as the Canadian taxpayer owned the securities for one year or longer. Thus, as further described below, RBC's tax strategy contemplated that RBC would buy and hold blocks of Canadian company securities in its RBC (Canadian Transit) accounts for at least one year. RBC conducted NBI trades between its Canadian Transit accounts and its subsidiary RBC EL to facilitate this tax strategy.

D. RBC's NBI Transactions Were Non-Competitively Executed Fictitious Sales

26. During the relevant period, RBC conducted its NBI trading activity primarily through RBC (Canadian Transit) trading NBIs with RBC EL, a subsidiary of RBC. The transactions were arranged off-exchange and then executed as block trades on the OneChicago exchange. When the positions were initiated, RBC (Canadian Transit) was nearly always a seller of the futures and RBC EL was nearly always the buyer. The transactions were conducted directly between RBC (Canadian Transit) and RBC EL. RBC almost never attempted to solicit competing NBI bids or offers from non RBC-affiliated market participants, and designed its trading strategy to exclude non RBC-affiliated counterparties.

27. RBC's Central Funding Group members designed all of the specific NBI products offered by OneChicago that RBC (Canadian Transit) traded with RBC EL. As relevant here, the NBIs that RBC designed were custom products comprised of baskets of Canadian securities.

28. Between 2006 and 2010, transactions between RBC (Canadian Transit) and RBC EL accounted for 100% of the total NBI volume on OneChicago.

29. In nearly every NBI transaction between RBC (Canadian Transit) and RBC EL during the relevant period, the transactions were executed through pre-arranged block trades. These offsetting futures transactions were designed to achieve, and did achieve, a wash result for

RBC. Thus, at the expiration of each NBI contract, gains made or losses incurred by RBC (Canadian Transit) on the futures transactions were offset by RBC EL's gains and losses on the futures transactions; the gains and losses netted to zero when consolidated in the overall profits and losses of RBC.

30. RBC (Canadian Transit) and RBC EL also made equal and offsetting securities purchases and sales that mirrored their NBI positions. RBC EL sold the underlying stocks that made up the NBI index, while RBC (Canadian Transit) purchased the same stocks and held them for the duration of the NBI contracts.

31. The prices of the NBI contracts RBC traded were not negotiated at arm's length. Instead, senior members of RBC's Central Funding Group determined the prices of the NBI contracts RBC (Canadian Transit) and RBC EL traded during the relevant period using a formula that incorporated (1) the average trading price of the individual securities underlying the NBI, (2) the estimated dividends on the securities, and (3) the estimated interest rate (cost of funds) for the term of the futures contract. The Central Funding Group created the dividend estimates used to price NBI contracts based on information provided by employees in other departments of RBC, or based on information collected directly by members of the Central Funding Group. Similarly, the Central Funding Group determined the interest rate component of the NBI price by collecting information from other departments of RBC that indicated where RBC could raise cash, and using that information to create an estimate of RBC's cost of funds.

32. In most cases, RBC (Canadian Transit) and RBC EL NBI traders did not communicate directly with one another to negotiate prices for NBI contracts. Instead, the traders dealt directly with the Central Funding Group. After the Central Funding Group created the price for an NBI, a member of that group would transmit the price directly to the NBI traders at

RBC (Canadian Transit) and RBC EL by phone or email. The price transmitted by the Central Funding Group then became the price at which the NBI contracts traded.

33. A co-head of RBC's Central Funding Group ("CFG Member 1") created RBC's NBI trading strategy and coordinated RBC's NBI trading during the relevant period. NBI traders at RBC EL were required to obtain the approval of CFG Member 1 to acquire new NBI positions, and to "roll" (as described below) or unwind existing positions. Among other tasks, CFG Member 1 also coordinated the risk limits and supervised the trading strategies and budgets for RBC's NBI trading activity, and supervised the RBC personnel at RBC (Canadian Transit) and RBC EL who conducted the trades. In addition, all of the senior RBC EL and RBC (Canadian Transit) employees responsible for executing RBC's NBI trading activity reported directly to CFG Member 1 during the relevant period.

34. Another senior Central Funding Group member ("CFG Member 2"), who also reported to CFG Member 1, coordinated RBC's NBI trading activity for both RBC (Canadian Transit) and RBC EL during the relevant period. CFG Member 2 was consulted when RBC (Canadian Transit) or RBC EL acquired a new NBI position, determined the overall size of RBC's NBI positions, selected which securities RBC (Canadian Transit) and RBC EL would purchase or sell as part of RBC's NBI strategy, and determined the quantities of such purchases and sales. CFG Member 2 was also responsible for advising RBC (Canadian Transit) and RBC EL about interest rate and dividend estimates used to price NBI contracts, creating the price of the NBI contracts, and deciding the overall volume of RBC's NBI business, among other tasks.

35. As alleged above, to qualify for the desired tax benefits, RBC held the Canadian securities underlying the NBI contracts for at least one year. NBI contracts expire quarterly. As a result, from the outset, RBC (Canadian Transit) and RBC EL agreed to "roll", or continue, their

respective NBI positions quarterly throughout the year, with each side taking offsetting cash gains and losses in the expiring contract month and immediately establishing new positions in the next contract month.

36. CFG Member 1 identified potential tax opportunities arising from dividends paid on Canadian securities and created RBC's stock and NBI trading strategy to take advantage of these opportunities. CFG Member 1 also worked with RBC employees in RBC's Tax Group to obtain the securities that the strategy required. CFG Member 2 and members of the RBC Tax Group assisted in the creation of the NBI trading strategy by, among other things, calculating a minimum profitability threshold for the NBI transactions, which they believed was required by Canadian tax law to ensure that the trades qualified for the tax benefits the transactions generated.

37. RBC's NBI sales and securities purchases, and RBC EL's offsetting NBI purchases and securities sales, constituted four legs of a single trading strategy created by CFG Member 1 and coordinated by CFG Members 1 and 2, two of the Central Funding Group's most senior members. The common purpose of the strategy was to generate tax benefits for RBC.

38. RBC's NBI transactions were not executed openly and competitively.

39. RBC, through its agents and employees, including CFG Members 1 and 2, intended for its NBI transactions to negate risk and price competition, and the transactions did in fact negate risk and competition.

40. RBC, through its agents and employees, including CFG Members 1 and 2, knew at the time RBC entered into the NBI transactions that they negated market risk and were designed to achieve, and did achieve, a wash result, and that the transactions resulted in a position and financial nullity.

E. RBC's SSF Transactions Were Non-Competitively Executed Fictitious Sales

41. During the relevant period, RBC conducted its SSF trading activity almost exclusively by RBC's Caribbean branches selling SSF futures contracts to RBC's subsidiary CMA. The transactions were arranged off-exchange and then executed as block trades on OneChicago. These trades were almost always originated by Caribbean. The transactions were arranged directly between CMA and Caribbean by email or phone communications. RBC almost never solicited competing SSF bids or offers from non RBC-affiliated market participants, and designed its trading strategy to exclude non RBC-affiliated counterparties.

42. Between 2005 and May 2010, transactions between Caribbean and CMA accounted, on average, for 51% of the total annual volume of SSF contracts traded on OneChicago. In some years, however, RBC's percentage of OneChicago's SSF volume was even higher. In 2006, for example, RBC's SSF trades accounted for 87% of the total SSF volume on OneChicago, and in 2007 its SSF trades accounted for over 72% of the total volume.

43. Caribbean's and CMA's offsetting futures transactions were designed to achieve, and did achieve, a wash result for RBC. Thus, at the expiration of each SSF contract, gains made or losses incurred from the futures transactions by RBC's Caribbean branches resulted in equal and offsetting losses or gains to RBC's subsidiary CMA, which netted to zero when consolidated with RBC's overall financial results.

44. Caribbean and CMA also made equal and offsetting purchases and sales of the stocks of U.S. companies underlying their SSF positions. Thus, Caribbean bought the same stocks that CMA sold during the term of the SSF contract. Caribbean and CMA always held SSF positions until maturity, and always physically settled the contracts, meaning that Caribbean delivered the underlying securities to CMA at the end of the contract period. The strategy called for the use of SSF contracts that RBC anticipated would expire only after the date on which the

underlying securities paid dividends, thus insuring that Caribbean would still own the securities on the dividend date, to secure the Canadian tax benefit. RBC also believed that the tax benefits depended upon RBC settling the SSF transactions through delivery of the underlying stock.

45. Upon the expiration of an SSF futures contract, after RBC (through Caribbean) delivered the underlying securities to CMA, the counterparties' respective positions were exactly the same as they were before the transaction began, while RBC stood to realize the tax benefit.

46. Similar to RBC's determination of NBI prices, CMA and Caribbean determined the price of the SSF contracts they traded using a formula based on the cash price of the security underlying the contract, the forecasted dividend for the security, and the relevant interest rate for the duration of the contract. Also similar to the NBI contracts, RBC personnel created and approved the dividend and interest rate components of the price.

47. RBC's SSF transactions were not negotiated at arm's length. At the beginning of an SSF transaction, RBC (through Caribbean) determined which SSF contacts to trade by selecting securities from a list that reflected securities currently held by CMA, its anticipated SSF counterparty. Thus, the universe of SSF contracts RBC would trade pursuant to its strategy was limited to SSFs on the equities CMA already owned.

48. This list of CMA-owned securities, which RBC called the "Dividend on the Table" report, was disseminated to the RBC managers responsible for overseeing the SSF strategy—including CFG Members 1 and 2—and the CMA and Caribbean SSF traders every morning by email from the RBC Capital Markets email server. The list contained specific information about CMA's securities holdings, including the securities' projected dividends and the expiration date for the corresponding SSF contracts.

49. The Dividend on the Table report also contained a column entitled "on the table," which reflected the monetary amount of foreign tax credit that could be generated by the dividends paid on each of the securities listed in the report, as well as a column reflecting the portion of the securities referenced in the report that had already been committed to another RBC strategy, and were therefore unavailable for the SSF strategy.

50. CFG Member 1 created RBC's SSF trading strategy as part of the overall tax strategy he developed. CFG Member 1 created the strategy such that RBC (through Caribbean) sold SSF contracts and CMA purchased SSF contracts. CFG Members 1 and 2, the same senior RBC employees responsible for coordinating RBC's NBI strategy, also coordinated RBC's SSF trading strategy on a day-to-day basis. During the relevant period, CFG Members 1 and 2 worked in RBC's Caribbean offices, which initiated nearly every SSF transaction, and either CFG Member 1 or CFG Member 2 approved Caribbean's SSF transactions on a trade-by-trade basis, including the size, composition, price, contract month, and timing of the trades.

51. During the relevant period, CFG Member 1 was the head of RBC Global Arbitrage and Trading in the Caribbean and the most senior RBC employee in either the Bahamas or Cayman office. Also during the relevant period, CFG Member 1 was a member of, and later the Chairman of the Board of Directors of CMA, the counterparty to Caribbean's SSF transactions.

52. Just as he did with respect to the NBI trading, CFG Member 1 identified potential tax opportunities and created RBC's SSF trading strategy to take advantage of them. CFG Member 2 and members of the RBC Tax Group assisted in the creation of the SSF strategy by calculating a minimum profitability threshold for the SSF transactions, which RBC believed was

required by Canadian tax law to ensure that the transactions qualified for the tax benefits they generated.

53. Caribbean's SSF sales and securities purchases, and CMA's offsetting SSF purchases and equities sales, constituted four legs of a single trading strategy created by CFG Member 1 and coordinated by CFG Members 1 and 2, two of the Central Funding Group's most senior members. The common purpose of the strategy was to generate tax benefits for RBC.

54. RBC's SSF transactions were not executed openly and competitively.

55. RBC, through its agents and employees, including CFG Members 1 and 2, intended for its SSF transactions to negate risk and price competition, and the transactions did in fact negate risk and price competition.

56. RBC, through its agents and employees, including CFG Members 1 and 2, knew at the time RBC entered into the SSF transactions that they negated risk and were designed to achieve, and did achieve, a wash result, and that the transactions resulted in a position and financial nullity.

F. RBC's False and Misleading Statements to CME Group

57. Beginning in at least September 2005, CME Group began to inquire into RBC's SSF transactions on OneChicago. CME Group's inquiry was prompted in part by questions it had received from the Commission's Division of Market Oversight ("DMO") concerning the purpose and mechanics of RBC's block trades on OneChicago.

58. On September 20, 2005, CME Group sent RBC a list of written questions seeking information about SSF trades conducted between RBC and one of its affiliates. In part, CME Group's questions sought information that would allow it to determine whether the SSF trades were "competitive, open, and efficient" as required by Core Principle 9 of the Act, 7 U.S.C. § 7(d)(9).

59. Among other questions, CME Group asked whether "RBC and its affiliates believe they meet the 'arms-length' criteria discussed" in the Commission's "proposed guidance on Core Principle 9," including whether each RBC entity engaged in SSF transactions had a "separate" account controller "with responsibility to evaluate the terms and conditions and the potential risks and benefits of prospective transactions . . . ."

60. RBC responded to CME Group's questions in a letter dated October 18, 2005 from RBC Capital Markets Corp.'s General Counsel, which purported to explain why RBC believed its SSF transactions complied with the Commission's proposed guidance on Core Principle 9. Specifically, RBC stated:

> The SSF block trades in which RBC entities are on both sides of the transaction qualify as arms length transactions pursuant to the proposed Guidance on Core Principle 9 issued by the CFTC. . . . The RBC entities participating in the SSF block trades are part of an arms length organizational structure, in that each of the RBC entities engaging in the respective SSF transactions have separate account controllers.

RBC's letter also stated:

> Because the various RBC entities utilize separate account controllers, and effect the cash and SSF components of the trades during market hours, we believe the transactions qualify as arms length transactions for purpose of the CFTC's proposed guidance on Core Principle 9.

61. On October 26, 2005, CME Group sent RBC a written follow-up to its September 20, 2005 request seeking additional information about RBC's SSF trades. Among other questions, the October 26, 2005 request asked "how the CMA and RBC (Bahamas Branch) . . . initially found each other to conduct the block trades—did the affiliates independently come up with the idea and strategies to trade, or did the idea/strategy originate at the corporate level?" In addition, CME Group asked whether "the [RBC] affiliates ever attempted to solicit other parties besides RBC entities to conduct OneChicago block trades" and if "it is possible that non-RBC entities might be involved in such block trades in the future."

62. In a November 17, 2005 written response to CME Group's questions from RBC Capital Markets Corp.'s General Counsel, RBC stated:

> The idea of engaging in OneChicago single stock future block transactions originated with the staff in our Bahamas office. The decision to engage in the block transactions was then made between the RBC affiliates involved in the transactions (primarily RBC (Bahamas Branch) and CMA) after discussions between them.

RBC's response also stated:

> The RBC entities have tried, with only very limited success, to conduct OneChicago block trades with non-RBC entities. We have spoken with several other firms about trading on OneChicago, but concerns about liquidity and pricing have inhibited interest. . . . [T]o date, we have only effected single stock futures transactions with two non-RBC counterparties. We are very enthusiastic about the OneChicago Exchange single stock futures market, and the possibility that additional participants will be attracted to the market. With such broadened participation, we have every reason to believe that we would effect business with a wide range of transaction counterparties.

63. RBC's October 18, 2005 and November 17, 2005 written responses to CME Group's questions were false and misleading because they concealed material information concerning RBC's SSF trading strategy. Among other material information, RBC's responses concealed information concerning the central role played by CFG Member 1 in the creation and management of RBC's SSF trading strategy, including, among other things, that:

- RBC's SSF strategy had, in fact, "originated at the corporate level" with CFG Member 1, who was (1) a Managing Director of RBC Capital Markets, (2) the head of Global Arbitrage and Trading for RBC's Caribbean branches, (3) a member of the Board of Directors of CMA, Caribbean's counterparty to nearly every SSF transaction, and (4) the co-head of RBC's Central Funding Group;

- "The idea of engaging in OneChicago single stock future block transactions" did not "originate[] with the staff in [RBC's] Bahamas office," but was instead conceived by CFG Member 1 and proposed to RBC management when CFG Member 1 was a Managing Director of RBC Capital Markets working in RBC's London office;

- The RBC branches and subsidiary that engaged in SSF trading did not "independently come up with the idea and strategies to trade" SSFs; instead, CFG

Member 1 devised the idea to trade SSFs between RBC-affiliated counterparties and created the futures trading strategies for both counterparties to the trades;

- In addition to creating RBC's SSF trading strategy, CFG Member 1 was required to approve Caribbean's SSF transactions on a trade-by-trade basis; and
- The RBC branches and subsidiary that engaged in SSF trading did not have "separate" account controllers "with responsibility to evaluate" the "potential risks" of the SSF transactions. Instead, RBC consolidated the risk evaluation function for both counterparties to the SSF transactions in a single RBC manager, who was the direct supervisor of CFG Member 1.

64. In addition, the statements to CME Group in RBC's October 18, 2005 and November 17, 2005 responses concerning the "arm's length" nature of the SSF transactions, RBC's "efforts to conduct block trades with non-RBC entities," and RBC's intention to "effect business with a wide range of transactions counterparties" were false and misleading because, as internal RBC documents show, RBC intentionally designed its SSF transactions to exclude non RBC-affiliated counterparties.

65. For example, in internal documents circulated to RBC management at the outset of the SSF trading strategy, CFG Member 1 advised RBC management that he intended to "structure the [SSF] trade internally" between RBC and its subsidiaries and "avoid the outsourcing" of SSF trades to non RBC-affiliated counterparties in order to "capture both sides of the profitability [of the trades] internally, within the RBC network of entities."

66. Similarly, in a September 29, 2005 internal draft of what became RBC's October 18, 2005 response letter to CME Group, RBC stated that it would "not outsource [SSF] transactions to" non RBC-affiliated counterparties "if these can be executed more cost efficiently internally," and that "[f]or this reason, the other side of RBC (Canadian Transit's) SSFs . . . will normally be taken by . . . RBCEL . . . ." This information, however, was omitted from the final version of RBC's October 18, 2005 letter to CME Group, and also was not disclosed in RBC's November 17, 2005 letter to CME Group.

67. Internal communications leading to RBC's November 17, 2005 response letter to CME Group also demonstrate that the letter contained false and misleading statements about RBC's "efforts to conduct block trades with non-RBC entities" and its purported intention to "effect business with a wide range of transactions counterparties." In a November 9-11, 2005 email exchange in which CFG Member 1, RBC Capital Market Corp.'s General Counsel and a senior RBC manager discussed a near-final draft of the letter, the senior RBC manager advised his colleagues that the letter "misleads as to our effort to engage other parties to take the other side of SSF trades w[ith] cma."

68. In this same email exchange, CFG Member 1 stated that RBC had "not actively marketed the [SSF] product to other firms," in part because RBC was "satisfied with the overall results" of trading SSFs exclusively between RBC entities, and in part because RBC was "considering an investment in the [OneChicago] exchange which could be more expensive (or unwanted) if the [SSF] market developed before that was completed." Despite these internal communications, RBC's final November 17, 2005 letter to CME Group contained only minor stylistic changes to the near-final draft discussed among CFG Member 1, RBC Capital Market Corp.'s General Counsel and the senior RBC manager.

69. The foregoing information concerning the central role played by CFG Member 1 in the creation and management of RBC's SSF trading strategy and RBC's intent to exclude non RBC-affiliated counterparties from its SSF transactions, among other material information relevant to RBC's SSF trading strategy, was concealed from CME Group and the Commission until 2010, when the Commission's Division of Enforcement discovered it during the course of its investigation into RBC's trading on OneChicago.

70. The foregoing information concerning the central role played by CFG Member 1 in the creation and management of RBC's SSF trading strategy and RBC's intent to exclude non RBC-affiliated counterparties from its SSF transactions, which was omitted from RBC's October 18, 2005 and November 17, 2005 written responses to CME Group, was directly relevant to CME Group's inquiry into whether the RBC affiliates' SSF trades were "arm's length," "competitive" and "open" as required by Core Principle 9 and the Commission's proposed guidance.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND THE COMMISSION'S REGULATIONS

COUNT ONE

VIOLATIONS OF SECTION 4c(a) OF THE ACT: WASH SALES AND FICTITIOUS SALES

71. The allegations set forth in paragraphs 1 through 70 are realleged and incorporated herein by reference.

72. Section 4c(a)(1) of the Act, as amended, to be codified at 7 U.S.C. § 6c(a)(1), provides, in relevant part, "It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2) involving the purchase or sale of any commodity for future delivery . . . if the transaction is or may be used to (A) hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity," or "(C) deliver any such commodity sold, shipped or received in interstate commerce for the execution of the transaction." 7 U.S.C. § 6c(a)(1). Paragraph (2) of Section 4c(a), in turn, provides, "[a] transaction referred to in paragraph (1) is a transaction that . . . is, is of the character of, or is commonly known to the trade as, a 'wash sale' or 'accommodation trade' . . . or is a fictitious sale or 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)(2).

73. As set forth above, during the relevant period RBC, through senior RBC personnel acting on RBC's behalf, knowingly offered to enter into and entered into transactions that were, or were of the character of, wash sales and fictitious sales in violation of Section 4c(a) of the Act, 7 U.S.C. § 6c(a), by simultaneously buying and selling the same size blocks of the same NBI and SSF contracts for the same delivery month at the same price, with the expectation that both parties to the trades would offset the futures positions against each other—*i.e.*, that the parties to the NBI transactions would periodically "roll" the futures positions at the same time for at least one year, and that the parties to the SSF transactions would settle by delivery of the underlying securities, such that the parties negated or virtually eliminated the risk of undertaking the respective futures positions. The transactions resulted in no change in the economic position of RBC, which, through its branches, accounts and subsidiaries, was in reality a single entity trading with itself.

74. RBC, through senior RBC personnel acting on RBC's behalf, intended to negate the risk and price competition normally attendant to futures transactions at the time RBC entered into the NBI and SSF transactions. RBC, through senior RBC personnel acting on RBC's behalf, knew at the time it entered into the transactions that they negated risk and price competition, and that they were designed to achieve, and did achieve, a wash result.

75. Each wash sale or fictitious sale of any NBI or SSF contract bought or sold by RBC, including its branches, accounts and subsidiaries, from June 1, 2007 through and including May 31, 2010 is alleged herein as a separate and distinct violation of Section 4c(a) of the Act, 7 U.S.C. § 6c(a).

76. The acts, omissions, and failures of RBC's employees, officers and agents set forth in paragraphs 1 through 70, above, occurred within the scope of the employees', officers'

and agents' employment, office, or agency with RBC. Therefore, RBC is liable for its employees', officers' and agents' acts, omissions, and failures constituting violations of Section 4c(a) of the Act, as amended, to be codified at 7 U.S.C. § 6c(a), pursuant to Section 2(a)(1)(B) of the Act, as amended, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

COUNT TWO

VIOLATIONS OF COMMISSION REGULATION 1.38(a): NON-COMPETITIVE TRANSACTIONS

77. The allegations set forth in paragraphs 1 through 70 are realleged and incorporated herein by reference.

78. Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2011), provides, in relevant part:

> *Competitive execution required; exceptions.* All purchases and sales of any commodity for future delivery . . . 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 . . . *Provided, however*, That this requirement shall not apply to transactions which are executed noncompetitively in accordance with the written rules of the contract market which have been submitted to and approved by the Commission, specifically providing for the noncompetitive execution of such transactions.

79. As set forth above, RBC, through senior RBC personnel acting on RBC's behalf, knowingly entered into NBI and SSF transactions during the relevant period that were not executed openly and competitively, in violation of Regulation 1.38(a), 17 C.F.R. § 1.38(a).

80. RBC's non-competitive NBI and SSF transactions were not executed in accordance with written rules of OneChicago which had been submitted to and approved by the Commission specifically providing for the non-competitive execution of such transactions.

81. Each non-competitive NBI and SSF trade by RBC, including its branches, accounts and subsidiaries, from June 1, 2007 through and including May 31, 2010 is alleged herein as a separate and distinct violation of Regulation 1.38(a), 17 C.F.R. § 1.38(a).

82. The acts, omissions, and failures of RBC's employees, officers and agents set forth in paragraphs 1 through 70, above, occurred within the scope of the employees', officers' and agents' employment, office, or agency with RBC. Therefore, RBC is liable for its employees', officers' and agents' acts, omissions, and failures constituting violations of Regulation 1.38(a), 17 C.F.R. § 1.38(a), pursuant to Section 2(a)(1)(B) of the Act, as amended, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

COUNT THREE

VIOLATIONS OF SECTION 9(a)(4) OF THE ACT: FALSE STATEMENTS TO A REGISTERED ENTITY

83. The allegations set forth in paragraphs 1 through 70 are realleged and incorporated herein by reference.

84. Section 9(a)(4) of the Act, to be codified at 7 U.S.C. § 13(a)(4), provides, in relevant part:

> It shall be a felony punishable by a fine of not more than $1,000,000 or imprisonment for not more than 10 years, or both, together with the costs of prosecution, for . . . [a]ny person 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 this Act acting in furtherance of its official duties under this Act.

85. As set forth above, during the relevant period RBC, through senior RBC personnel acting on RBC's behalf, (1) willfully falsified, concealed or covered up by a scheme or artifice a material fact in correspondence to CME Group, which exercised the regulatory compliance function for OneChicago, concerning RBC's SSF transactions; (2) willfully made

false, fictitious or fraudulent statements or representations to OneChicago by making such statements or representations to CME Group concerning RBC's SSF transactions; and (3) made use of false writings or documents submitted to OneChicago by submitting such writings or documents to CME Group knowing them to contain false, fictitious or fraudulent statements concerning RBC's SSF transactions, in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).

86. Each act of falsification, concealment or cover up, each false or fictitious statement or representation, and each use of a false writing or document by RBC, including its branches, accounts and subsidiaries, from January 1, 2005 through and including April 30, 2010 is alleged herein as a separate and distinct violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4).

87. The acts, omissions, and failures of RBC's employees, officers and agents set forth in paragraphs 1 through 70, above, occurred within the scope of the employees', officers' and agents' employment, office, or agency with RBC. Therefore, RBC is liable for its employees', officers' and agents' acts, omissions, and failures constituting violations of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4), pursuant to Section 2(a)(1)(B) of the Act, as amended, 7 U.S.C. § 2(a)(1)(B), and Regulation 1.2, 17 C.F.R. § 1.2 (2011).

VI. RELIEF REQUESTED

WHEREFORE, the CFTC respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers, enter:

A. An order finding that Defendant violated Sections 4c(a) and 9(a)(4) of the Act, as amended, 7 U.S.C. §§ 6c(a) and 13(a)(4), and Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a);

B. Enter an order of permanent injunction enjoining Defendant and all persons insofar as they are acting in the capacity of Defendant's agents, servants, employees, successors, assigns, or attorneys, and all persons insofar as they are acting in active concert or participation with the Defendant who receive actual notice of such order by personal service or otherwise, from directly or indirectly engaging in conduct in violation of Sections 4c(a) and 9(a)(4) of the Act, as amended, 7 U.S.C. §§ 6c(a) and 13(a)(4), and Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a);

C. Enter an order directing Defendant to make an accounting to the Court of all profits made and capital costs savings realized as a result of its NBI and SSF transactions, and all tax benefits obtained as a result of the securities transactions in connection with which its NBI and SSF transactions were made, between June 1, 2007 and May 31, 2010;

D. Enter an order requiring Defendant to pay civil monetary penalties under the Act, to be assessed by the Court in amounts of not more than the greater of: (1) triple the monetary gain to Defendant for each violation of the Act, or (2) a penalty of $130,000 for each violation from October 23, 2004 through October 22, 2008, or (3) a penalty of $140,000 for each violation on or after October 23, 2008 to the present;

E. Enter an order requiring Defendant to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2) (1994); and

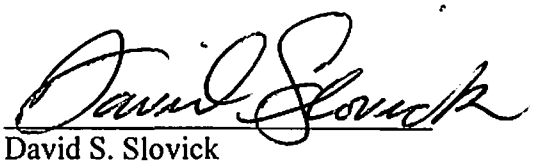
F. Enter an Order providing such other and further relief as this Court may deem necessary and appropriate under the circumstances.

VII. DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), the CFTC hereby demands a jury trial.

Dated: October 17, 2012

Respectfully Submitted,



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