

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

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4:31 pm, Sep 29, 2014

In the Matter of:

Fan Zhang,

Respondent.

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) **CFTC Docket No. 14-33**
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**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 on December 26, 2012, and again on March 3, 5, and 7, 2013 (the “Relevant Period”) Fan Zhang (“Zhang” or “Respondent”) violated Section 4c(a) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6c(a) (2012) and Commission Regulation (“Regulation”) 1.38, 17 C.F.R. § 1.38(a) (2014). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent has engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of this administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Respondent admits the findings and conclusions herein, and consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Respondent consents to the 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 in 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

III.

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Respondent engaged in fictitious sales, noncompetitive, prearranged trades in the Las Vegas Housing Market Futures Contract (CME: "LAV"), the Cash-Settled Cheese Futures Contract (CME: "CSC"), and the Ethanol Futures Contract (CBOT: "EH"). The total funds passed between accounts as a result of prearranged trading were over \$200,000.

B. RESPONDENT

Fan Zhang is a resident of Las Vegas, Nevada and Cambridge, Massachusetts. Respondent is 50% general partner and owner of FZIC, LLC. He is not registered with the Commission in any capacity.

C. OTHER RELEVANT ENTITIES

FZIC, LLC ("FZIC") is an investment club created under the laws of Nevada in early 2012 by Respondent and a partner to trade commodity futures and equities. FZIC has never been registered with the Commission in any capacity.

D. FACTS

1. Overview

During the Relevant Period, Respondent intentionally placed buy and sell orders for the same price, volume, and expiration month in three futures contracts: EH, CSC, and LAV. Respondent intentionally placed these buy and sell orders for the purpose of transferring profits between two Interactive Brokers customer accounts ("IB accounts"). One of the IB accounts is held in the name of FZIC, which is 50% owned by Respondent; the other IB account is held in the name of Respondent's mother. During the relevant period, Respondent's mother's account realized profits over \$200,000 from Respondent's prearranged trades.

Respondent intentionally engaged in prearranged trades for the purpose of discretely transferring money into his mother's trading account without her knowledge.

2. Respondent's Prearranged Trades on December 26, 2012

On December 26, 2012, Respondent engaged in four prearranged trades between FZIC's and his mother's accounts for nine February 2013 LAV futures contracts. On

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

February 26, 2013, the expiration of those contracts resulted in a realized profit of \$19,772.50 in Respondent's mother's account.

3. Respondent's Prearranged Trades on March 3, 2013

On March 3, 2013, Respondent engaged in fifteen prearranged trades involving one hundred fifty-five contracts in the April 2013, May 2013, and June 2013 EH futures contracts and the March 2013 CSC futures contract. Respondent's prearranged trading on March 3, 2013, of both FZIC's and his mother's accounts realized a profit to Respondent's mother's account of \$79,492.

4. Respondent's Prearranged Trades on March 5, 2013

On March 5, 2013, Respondent engaged in twenty-seven prearranged trades of seventy-three contracts in the May 2013, June 2013, July 2013, and August 2013 EH futures contracts. Respondent's prearranged trading on March 5, 2013, of both FZIC's and his mother's accounts realized a profit to Respondent's mother's account of \$57,971.

5. Respondent's Prearranged Trades on March 7, 2013

On March 7, 2013, Respondent engaged in forty-one prearranged trades of one hundred three contracts in the April 2013, May 2013, June 2013, July 2013, August 2013, and September 2013 EH futures contracts. Respondent's prearranged trading on March 7, 2013, of both FZIC's and his mother's accounts realized a profit to Respondent's mother's account of \$66,062.

6. Respondent's Failure to Cooperate with Investigation

Respondent was provided with multiple opportunities to cooperate with the Commission's investigation, but failed to do so. His failure to cooperate caused the Commission to expend additional resources and unduly delayed the resolution of this matter.

IV.

LEGAL DISCUSSION

Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2012), provides that it is unlawful for any person to enter into a transaction that:

- (i) is, 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.

7 U.S.C. § 6c(a)(2)(A) (2012).

A fictitious sale is a general category that includes, at a minimum, the unlawful practices specifically enumerated in Section 4c(a), as well as prearranged trading. *In re*

Thomas Collins, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194, at 45,742 (CFTC Dec. 10, 1997).

The Commission has held that “the central characteristic of the general category of fictitious sales is the use of trading techniques that give the appearance of submitting trades to the open market while negating the risk of price competition incident to such a market.” *In re Harold Collins*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,982, at 31,902-903 (CFTC Apr. 4, 1986) (holding that illegitimate prearranged trading is a form of fictitious sale “[b]y determining trade information such as price and quantity outside the pit, then using the market mechanism to shield the private nature of the bargain from public scrutiny, both price competition and market risk are eliminated.”), *rev’d on other grounds sub nom. Stoller v. CFTC*, 834 F.2d 262 (2d Cir. 1987). “By enacting Section 4c(a), Congress sought to ensure that all trades are focused in the centralized marketplace to participate in the competitive determination of the price of the futures contracts.” *In re Thomas Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 45,742 (quoting S. REP. NO. 93-1131, at 16-17 (1974)) (internal quotation marks omitted). *See also Merrill Lynch Futures, Inc. v. Kelly*, 585 F. Supp. 1245, 1251 n.3 (S.D.N.Y. 1984) (holding that Section 4c(a) of the Act was generally intended to prevent collusive trades conducted away from the pits).

Respondent admitted facts demonstrating that, during the Relevant Period, Respondent intentionally engaged in the trading activity set forth above that lacked both price competition and market risk, and that he engaged in this trading activity for the purpose of passing trading profits from FZIC’s account to Respondent’s mother’s account. As such, Respondent’s trades constituted fictitious sales and noncompetitive, prearranged trades in violation of Section 4c(a) of the Act.

Similarly, Regulation 1.38(a) provides that “[a]ll 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.” 17 C.F.R. § 1.38(a) (2014). Respondent executed trades that were not subject to the competitive forces of the market. As set forth above, such conduct negates the risk incident to a market and, as a result, Respondent’s trading activity during the Relevant Period violated Regulation 1.38. *In re Thomas Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 45,742; *In re Harold Collins*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 31,902, 31,903 n.23.

V.

FINDINGS OF VIOLATION

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

VI.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which he:

- 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 and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Admits the findings and conclusions in this Order;
- D. 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 (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 (2014), 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, 857-868 (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;

- E. 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;
- F. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that Respondent violated Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2012), and Regulation 1.38, 17 C.F.R. § 1.38 (2014);
 2. orders Respondent to cease and desist from violating Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2012), and Regulation 1.38, 17 C.F.R. § 1.38 (2014);
 3. orders that Respondent be, until five years after full payment and satisfaction of the CMP Obligation and any applicable interest, 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 of the Act, as amended, 7 U.S.C. § 1a (2012)), and all registered entities shall refuse him trading privileges; and
 4. orders Respondent to pay a civil monetary penalty in the amount of two-hundred fifty thousand dollars (\$250,000) within ten (10) days of the date of entry of this Order, plus post-judgment interest; and
 5. orders Respondent 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. Respondent shall cease and desist from violating Section 4c(a) of the Act, 7 U.S.C. § 9 (2012), and Regulation 1.38, 17 C.F.R. § 1.38 (2014);
- B. Respondent shall pay a civil monetary penalty in the amount of two-hundred fifty thousand dollars (\$250,000) within ten (10) business 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) business days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP 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). Respondent 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 by other than electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
Attn: Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-7262

If payment by electronic funds transfer is chosen, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent 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 21st Street, NW, Washington, D.C. 20581.

- C. Respondent is, until five years after full payment and satisfaction of the CMP Obligation and any applicable interest, 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 of the Act, as amended, 7 U.S.C. § 1a (2012)), and all registered entities shall refuse him trading privileges.
- D. Respondent shall comply with the following conditions and undertakings set forth in the Offer:

1. Public Statements: Respondent and his agents or employees under his authority or control shall not (i) 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; and (ii) make or permit to be made any public statement to the effect that Respondent does not admit the findings and conclusions of this Order, or that this Order contains no admission of the allegations; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent 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.

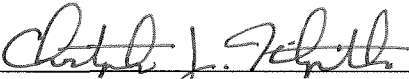
2. Respondent agrees that he shall not, for a period of five years, directly or indirectly, in:
 - a. enter into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 1.3 (hh), 17 C.F.R. § 1.3(hh) (2014)) ("commodity options"), security futures products, swaps (as that term is defined in Section 1a(47) of the Act, 7 U.S.C. § 1a(47) (2012), and as further defined by Regulation 1.3(xxx), 17 C.F.R. § 1.3(xxx) (2014)), and/or foreign currency (as described in Section 2(c)(2)(B) and 2(c)(2)(C)(i) of the Act, 7 U.S.C. § 2(c)(2)(B) and 2(c)(2)(C)(i) (2012)) ("forex contracts") for his own personal account or for any account in which he has a direct or indirect interest;
 - b. have any commodity futures, options on commodity futures, commodity options, security futures products, swaps and/or forex contracts traded on his behalf;
 - c. 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 futures, options on commodity futures, commodity options, security futures products, swaps and/or forex contracts;
 - d. solicit, receive, or accept any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, security futures products, swaps, and/or forex contracts;
 - e. 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) (2014); and/or

- f. act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2014)), agent or any other officer or employee of any person (as that term is defined in Section 1a of the Act, as amended, 7 U.S.C. § 1a (2012)) registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2014).
- E. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent's CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Order, and shall not be deemed 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 Respondent satisfies in full his CMP Obligation as set forth in this Order, Respondent 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.

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

By the Commission



Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 29, 2014