UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of: **TAISHIN SECURITIES CO., LTD.,** **Respondent.**	)	**CFTC Docket No. 24-34**

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

I. INTRODUCTION

The Commodity Futures Trading Commission ("Commission") has reason to believe that from October 21 to December 13, 2022 ("Relevant Period"), Taishin Securities Co., Ltd. ("Respondent" or "Taishin") violated Section 4c(a)(l) and (2)(A) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 6c(a)(l), (2)(A), and Commission Regulation ("Regulation") 1.38(a) (2023). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions ("Order"), and acknowledges service of this Order.[1]

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

II. FINDINGS

The Commission finds the following:

A. SUMMARY

On fifty occasions during the Relevant Period, Taishin engaged in wash sales in violation of Section 4c(a)(1) and (2)(A) of the Act, 7 U.S.C. § 6c(a)(1), (2)(A). Taishin entered bids and offers for the same quantities of the same futures contracts for trading accounts that had the same beneficial owner with the knowledge that such structuring would enhance the likelihood that its buy and sell orders would be filled at the same or similar price, and which did in fact result in offsetting trades upon execution. By so structuring its orders, Taishin negated the risk or price competition incidental to an open and competitive marketplace and thus engaged in noncompetitive transactions in violation of Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2023).

B. RESPONDENT

Respondent **Taishin Securities Co., Ltd.** is a Taiwanese financial services company that acts as a Taiwan Exchange ETF market maker. In connection with its market-making activities for ETFs, Taishin buys and sells commodity futures to manage the price risk exposures to the assets underlying the ETFs that were sold or bought. Taishin has never been registered with the Commission in any capacity.

C. FACTS

During the Relevant Period, Taishin maintained separate futures trading accounts at two different Taiwanese brokers ("Broker A" and "Broker B"). Both brokers cleared transactions for Taishin through U.S. futures commission merchants. Both accounts were under Taishin's control. A Taishin Trader ("Trader A") was authorized to trade in both accounts.

In or around October 2022, for certain commercial and business purposes, Trader A reached internal trading limits with Broker A and decided to transfer futures positions held at Broker A to Taishin's account held at Broker B. To effectuate this transfer, Taishin placed offsetting orders for the purchase and sale of the same delivery month of the same futures contract at the same price knowing that this would increase the likelihood that its buy and sell orders would be filled at the same or similar price. The effect of this was to transfer some or all of Taishin's open futures positions from Broker A to Broker B. On four days between October 21 and December 13, 2022, Trader A executed fifty wash trades between the Broker A and Broker B trading accounts. All the trades took place on the Chicago Mercantile Exchange. The trades encompassed 175 contracts across six different products with an aggregate value of approximately $17 million.

III. LEGAL DISCUSSION

A. Respondent Entered into Wash Sales in Violation of Section 4c(a)(1) and (2)(A) of the Act

Section 4c(a)(1) and (2)(A) of the Act, 7 U.S.C. § 6c(a)(1), (2)(A), in part, makes it "unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction" involving commodity futures that "is of the character of, or is commonly known to the trade as, a 'wash sale[.]'" A wash sale is a form of fictitious sale. *In re Gimbel,* CFTC No. 84-40, 1988 WL 232267, at *1 (Apr. 14, 1988), *aff'd as to liability*, 872 F.2d 196 (7th Cir. 1989). "[T]ransactions initiated with an intent to avoid bona fide trading transactions that result in a 'wash' of the constituent positions are wash sales under Section 4c(a)(A) without regard to the motivation for the particular transaction." *Id.* at *2 n.6.

To establish that a wash sale has occurred, the Commission must initially demonstrate that the transaction at issue achieved a wash result. The Commission may demonstrate that the trades resulted in a wash by showing: "(1) the purchase and sale (2) of the same delivery month of the same futures contract (3) at the same (or a similar) price." *Wilson v. CFTC*, 322 F.3d 555, 559 (8th Cir. 2003) (citing *In re Gilchrist*, CFTC No. 83-58, 1991 WL 83518, at *9 (Jan. 25, 1991)).

In addition to the factors enumerated in *Gilchrist,* intent must be proven to establish a violation of Section 4c of the Act. *See, e.g., Reddy v. CFTC,* 191 F.3d 109, 119 (2d Cir. 1999). The intent to negate risk or price competition and avoid a bona fide market position can be inferred from prearrangement, or "from the intentional structuring of a transaction in a manner to achieve the same result as prearrangement." *In re Three Eight Corp.,* CFTC No. 88-33, 1993 WL 212489, at *7 n.15 (Jun. 16, 1993) (citing *In re Collins,* CFTC No. 77-15, 1986 WL 66165, at *5 (Apr. 4, 1986), *rev'd on other grounds sub nom. Stoller v. CFTC,* 834 F.2d 262 (2d Cir. 1987)). The placement of offsetting orders to buy and sell, while simultaneously taking steps to "enhance the likelihood that the buy and sell orders would be filled at the same or a similar price" is persuasive evidence that the trader intends to negate risk and price competition. *Collins,* 1986 WL 66165, at *5; *see also In re Piasio,* CFTC No. 97-9, 2000 WL 1466069, at *10 (Sept. 29, 2000) (finding customer who placed paired buy and sell orders, with specific pricing and loss limitation instructions, "structured its orders to negate risk" and thus had intent to violate Section 4c), *aff'd,* 54 Fed. App'x 702 (2d Cir. 2002).

Taishin entered offsetting orders for the purchase and sale of the same delivery month of the same futures contract at the same price with a purpose of transferring its futures position between its account at Broker A to its account at Broker B. By placing offsetting orders for the purchase and sale of the same delivery month of the same futures contract at the same price, Taishin knew that this would increase the likelihood that its buy and sell orders would be filled at the same or similar price. Additionally, Taishin's structuring of these orders negated market risk. In doing so, Taishin violated Section 4c(a)(1) and (2)(A) of the Act by entering into transactions of the character of, and commonly known as, wash sales.

B. Respondent Executed Noncompetitive Trades in Violation of Commission Regulation 1.38(a)

Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2023), generally requires that all purchases and sales of commodity futures be executed "openly and competitively." The purpose of this requirement is to ensure that all trades are executed at competitive prices and that all trades are directed into a centralized marketplace to participate in the competitive determination of the price of futures contracts. *In re Summerhaven Inv. Mgmt. LLC*, CFTC No. 21-07, 2021 WL 3195869, at *4 (May 18, 2021) (consent order). Noncompetitive trades are also a type of fictitious sale because they negate the risk incidental to an open and competitive market. *In re Fisher*, CFTC No. 93-2, 2004 WL 584216, at *3 n.11 (Mar. 24, 2004); *see also In re Copersucar Trading A.V.V.*, CFTC No. 17-22, 2017 WL 3588915, at *3-4 (Aug. 15, 2017) (consent order) (structuring and transferring positions between proprietary accounts constituted violations of Regulation 1.38(a)).

Taishin entered offsetting orders with the intent that some or all of those orders would offset, and the timing and structure of those orders minimized market competition. Taishin also knew that its structuring of the subject trades would not subject them to competitive market forces because it knew that some or all of their orders would trade with others that Taishin had already submitted. The executions of these orders were not open and competitive, and because Taishin engaged in noncompetitive trades, it violated Regulation 1.38(a).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 4c(a)(l) and (2)(A) of the Act, 7 U.S.C. § 6c(a)(l), (2)(A), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2023).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it knowingly and voluntarily:

A. Consents to the resolution of this matter in an administrative proceeding;

B. Acknowledges service of this Order;

C. 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;

D. Waives:

1. The filing and service of a complaint and notice of hearing;

2. A hearing;

3. All post-hearing procedures;

4. Any and all rights or defenses that it has or might have for the matter to be adjudicated in a federal district court in the first instance, including any associated right to a jury trial;

5. Judicial review by any court;

6. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;

7. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2023), relating to, or arising from, this proceeding;

8. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and

9. 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, including this Order;

E. Agrees that it is not the prevailing party in this action for purposes of the waiver of any and all rights under the Equal Access to Justice Act specified in subpart 7 of Paragraph D;

F. 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; and

G. 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)(l) and (2)(A) of the Act, 7 U.S.C. § 6c(a)(l), (2)(A), and Regulation 1.38(a), 17C.F.R. § 1 .38(a) (2023);

2. Orders Respondent to cease and desist from violating Section 4c(a)(l) and (2)(A) of the Act and Regulation 1.38(a);

3. Orders Respondent to pay a civil monetary penalty in the amount of Two Hundred Thousand Dollars ($200,000.00), plus post-judgment interest, according to the terms set forth below; and

4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order; and

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. Respondent and its successors and assigns shall cease and desist from violating Section 4c(a)(l) and (2)(A) of the Act, 7 U.S.C. § 6c(a)(l), (2)(A), and Regulation 1.38(a), 17 C.F.R. § l.38(a) (2023).

B. Respondent shall pay, jointly and severally, a civil monetary penalty in the amount of two hundred thousand dollars ($200,000.00) ("CMP Obligation"), within thirty (30) days of the date of entry of this Order. If the CMP Obligation is not paid in full within thirty (30) days of the date of entry of the Order, then post-judgment interest shall accrue on the unpaid portion of 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.

C. Respondent shall pay the CMP Obligation and any post-judgment interest 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:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact the Federal Aviation Administration at the email address above 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.

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

1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, 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 the Order or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision

shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

2. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.

3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent' CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.

5. Notice to Creditors: Until such time as Respondent satisfies in full its CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondent' debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20581

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

By the Commission.

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

Dated: September 30, 2024