

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)
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Eagle Market Makers, Inc.)
Respondent.)

) CFTC Docket No. 19-08
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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 in or about February 2015 to February 2019 (the “Relevant Period”) the Respondent, Eagle Market Makers, Inc. (“Eagle” or “Respondent”), violated Section 4c(a)(1) and (2) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6c(a)(1), (2) (2012), and Commission Regulation (“Regulation”) 1.38(a), 17 C.F.R. § 1.38(a) (2018). 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”).¹

¹ Respondent consents to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

On multiple occasions during the Relevant Period, Respondent engaged in wash sales in violation of Section 4c(a)(1) and (2) of the Act, 7 U.S.C. § 6c(a)(1), (2) (2012). Eagle entered bids and offers of similar quantities in the same futures product for trading accounts that were owned by Eagle which were intended to and did in fact offset each other upon execution. Typically, a subsequent offsetting bid was entered and priced higher than its original resting offer and/or a subsequent offsetting offer was similarly entered and priced lower than its original resting bid. By intentionally entering these offsetting orders in this manner and achieving the goal of having these bids and offers offset each other upon execution, Eagle 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) (2018).

B. RESPONDENTS

Respondent **Eagle Market Makers** has its principal office located in Chicago, Illinois and is a clearing member firm of the Chicago Mercantile Exchange, Inc. (“CME”). Eagle is a proprietary trading firm that trades futures products. Eagle was previously registered with the Commission as a futures commission merchant in 1987 and as a commodity pool operator and a commodity trading advisor in 1995. These registrations were withdrawn in 2013. Eagle was not registered with the Commission during the Relevant Period and also is currently not registered with the Commission in any capacity.

C. FACTS

During the Relevant Period, Eagle engaged in multiple wash and non-competitive transactions for Eagle’s proprietary account. These transactions involved agricultural futures products such as corn, soybean, soybean oil, soybean meal and wheat, and also included Eurodollar futures contracts. The agricultural futures products were traded on the Chicago Board of Trade and the Eurodollar futures were traded on the CME (collectively, the “Exchanges”). Both Exchanges are designated contract markets.

In each instance, an employee of Eagle, who was responsible for Eagle’s proprietary trading activity (“Eagle Trader”), entered an original bid and/or offer and a subsequent offsetting bid was entered and priced higher than its original resting offer and/or a subsequent offsetting offer was similarly entered and priced lower than its original resting bid (“Offsetting Orders”) during the pre-trading period, also known as the pre-opening period (“Pre-Open”).

The Pre-Open is a predetermined period of time before the next trading session opens when orders generally can be entered, modified and cancelled, but no trades can be executed. During the Pre-Open, however, there is a defined period of time called the “No-Cancel” or “Lockdown” when orders may only be entered but cannot be canceled or modified (“Lockdown Period”). The Lockdown Period typically is the last 30 seconds of the Pre-Open.

In each instance, Eagle Traders entered their original bids and offers during the Pre-Open and then, due to a change in market conditions, no longer wanted to have these original bids and offers executed as entered. However, since the market conditions typically changed during the Lockdown Period, the rules of the Lockdown Period prevented them from modifying or canceling their original bids and offers. As a result, the Eagle Traders then entered their Offsetting Orders during the Lockdown Period to offset their original bids and offers. Immediately after the market opened, the Offsetting Orders offset these original bids and offers. Through this conduct, Eagle intended to and did negate market risk or price competition and engaged in wash sales that were noncompetitive transactions.

III. LEGAL DISCUSSION

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

Section 4c(a)(1) and (2) of the Act, 7 U.S.C. § 6c(a)(1), (2) (2012), in part, makes it “unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction” that “is, 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 sub nom. Gimbel v. CFTC*, 872 F.2d 196 (7th Cir. 1989). “[T]he Commission also remains of the view that transactions 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 *4 n.6.

In order to establish that a wash sale has occurred, it must initially be demonstrated 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 properly be inferred from prearrangement but it can also be inferred “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*, CFTC No. 77-15, 1986 WL 66165, at *5 (Apr. 4, 1986); *see also In re Piasio*, CFTC No. 97-9, 2000 WL 1466069 (Sept. 29, 2000) (finding customer who placed paired buy and sell orders, with specific pricing and loss limitation instructions, “structured orders to negate risk” and thus had intent to violate Section 4c), *aff’d sub nom. Piasio v. CFTC*, 54 Fed. App’x 702 (2d Cir. 2002).

Respondent entered Offsetting Orders for the purchase and sale of the same delivery month of the same futures contract during the Pre-Open that achieved wash results. Additionally, Respondent knowingly entered into the purchase and sale of these futures contracts for the purpose of negating market risk. In doing so, Respondent violated Section 4c(a)(1) and (2) 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) (2018), 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. 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) (finding that “[b]y knowingly structuring and entering into prearranged noncompetitive trades, Respondent violated Regulation 1.38 (a)”).

Because Respondent entered the Offsetting Orders during the Lockdown Period with the knowledge that they would offset Respondent’s original bids or offers once the market opened for trading, the executions of these offsetting orders negated risk and were not open and competitive. Thus, because it engaged in noncompetitive trades, Respondent 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)(1) and (2) of the Act, 7 U.S.C. § 6c(a)(1), (2) (2012), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2018).

V.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. 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 it 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 Regulations, 17 C.F.R. pt. 148 (2018), relating to, or arising from, this proceeding;
 - 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-74 (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
 - 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. 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;

- E. 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, during the Relevant Period, violated Section 4c(a)(1) and (2) of the Act, 7 U.S.C § 6a(a)(1), (2) (2012), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2018);
 2. Orders Respondent to cease and desist from violating Section 4c(a)(1) and (2) of the Act and Regulation 1.38(a);
 3. Orders Respondent to pay a civil monetary penalty in the amount of \$350,000, plus post-judgment interest if not paid within ten days of the entry of this Order ("CMP Obligation"); and
 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings as set forth in Section VI of this Order.

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)(1) and (2) of the Act, 7 U.S.C. § 6c(a)(1), (2) (2012), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2018).
- B. Respondent shall pay the CMP Obligation in the amount of three hundred and fifty thousand dollars (\$350,000) within ten days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of 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).

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
Division of Enforcement
6500 S. MacArthur Blvd.
HQ Room 181
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

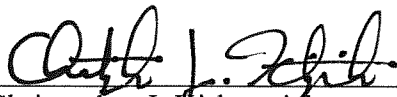
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. The paying 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 and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Remediation: With respect to its remediation efforts, to the extent not already undertaken, Respondent undertakes that:
 - a. Respondent will implement and improve its internal controls and procedures in a manner reasonably designed to ensure compliance with applicable prohibitions on wash sales and non-competitive trading; and
 - b. Respondent's remediation improvements will include internal controls and procedures relating to: i) maintaining and supplementing its training program, and providing ongoing training addressing legal prohibitions with regard to wash sales and non-competitive trading to employees of Eagle who trade futures products on behalf of Eagle; and ii) adopting measures to identify and deter trading activity that does not comply with applicable prohibitions on wash sales and non-competitive trading.

2. 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 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 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 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.
3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's 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 Consent 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.

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: June 28, 2019