UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of: **Kunal Bansal, Vinit Agarwal, Aralia Securities Ltd., and Vintage Bullion DMCC,** **Respondents.**	)	**CFTC Docket No. 22-08**	**RECEIVED CFTC** Office of Proceedings Proceedings Clerk *7:53 am, Dec 27, 2021*

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 in April 2020 ("Relevant Period"), Kunal Bansal ("Bansal"), Vinit Agarwal ("Agarwal"), Aralia Securities Ltd. ("Aralia"), and Vintage Bullion DMCC ("Vintage") (collectively, "Respondents") violated Section 4c(a)(l) and (2) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6c(a)(l), (2) (2018), and Commission Regulation ("Regulation") 1.38(a), 17 C.F.R. § 1.38(a) (2020). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

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

[1] Respondents consent 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 agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondents do 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. Respondents do 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

During the Relevant Period, Banal and Agarwal entered bids and offers of similar quantities in the same futures product for trading accounts that had the same ultimate beneficial owner and which were intended to and did in fact offset each other upon execution. In doing so, Banal, on behalf of Aralia, and Agarwal, on behalf of Vintage, engaged in wash sales in violation of Section 4c(a)(l) and (2) of the Act, 7 U.S.C. § 6c(a)(l), (2) (2018). Additionally, by intentionally entering these offsetting orders in this manner and achieving the goal of having these bids and offers offset each other upon execution, Banal and Agarwal 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) (2020).

B. RESPONDENTS

Respondent Bansal is the sole ultimate beneficial owner of both Respondents Aralia and Vintage.

Respondent Aralia is a "family office" investment entity, based in Hong Kong, that invests Respondent Bansal family's proprietary capital. Bansal makes all investment decisions at Aralia and is its sole trader.

Respondent Vintage is a commodities-trading company, based in Dubai, UAE, that specializes in physical and financial precious metals trading.

Respondent Agarwal is head of trading at Vintage.

None of the Respondents have ever been registered with the Commission in any capacity.

C. FACTS

During the Relevant Period, Bansal, on behalf of Aralia, and Agarwal, on behalf of Vintage, engaged in multiple wash and non-competitive transactions for accounts held by the same ultimate beneficial owner, Respondent Bansal. These transactions involved gold futures traded on the Commodity Exchange Inc. ("COMEX), which is a designated contract market owned and operated by CME Group, Inc.

On April 3, April 7, and April 9, 2020, Vintage entered into over the counter gold positions that it wanted to hedge using physically-delivered futures contracts. However, because Vintage did not have a futures account with a Futures Commission Merchant ("FCM") at that time, Aralia entered into the futures trades on behalf of Vintage through Aralia's FCM.

Subsequently, Aralia learned that its FCM could not allow physical deliveries on the trades it had made for Vintage. To ensure the physical delivery it needed, Vintage opened a futures account on April 13, 2020, with a different FCM that permitted physical deliveries on gold futures, and Respondents came up with a plan effectively to move the futures positions from Aralia to Vintage.

To move the positions, Respondents Bansal and Agarwal agreed to a general strategy whereby, over an approximately 10 to 20-minute period, Aralia would offset its trades and Vintage would initiate trades. To accomplish this, Bansal planned to place buy orders on behalf of Aralia (to offset its sell orders) at the same time and at the same prices that Agarwal planned to place sell orders on behalf of Vintage.

On or about April 14, 2020, Bansal and Agarwal executed their plan. Specifically, Bansal directed Agarwal to enter orders for Vintage to sell 250 gold futures contracts traded on COMEX at a specific time. At the same time Agarwal entered those orders, Bansal entered off-setting orders to purchase gold futures in the same quantities and at the same prices. In one instance, Agarwal's offer differed from Bansal's bid, and therefore the trades failed to match. To ensure the trades would match, Agarwal lowered his offer to match Bansal's bid. As a result of Bansal and Agarwal's conduct, Aralia and Vintage entered into a total of thirteen wash trades consisting of 189 gold futures contracts.[2]

III. LEGAL DISCUSSION

A. Respondents 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) (2018), in part, makes it "unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction" that "is, or is of the character of, or is commonly known to the trade as, a 'wash sale'" or "is a fictitious sale." A wash sale is a form of fictitious sale. *In re Gimbel,* CFTC No. 84-20, 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). "The 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 *5 n.6.

To establish that a wash sale has occurred, it must initially be demonstrated that the transaction at issue achieved a wash result. *Wilson v. CFTC*, 322 F.3d 555, 559 (8th Cir. 2003). 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." *Id*. (citing *In re Gilchrist*, CFTC No. 83-58, 1991 WL 83518, at *9 (Jan. 25, 1991)).

In addition to the factors enumerated in *Wilson* and *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

[2] The remaining 61 contracts were matched with orders placed by other market participants.

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 (June 16, 1993) (quoting *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 of the Act), *aff'd sub nom. Piasio v. CFTC*, 54 Fed. App'x 702 (2d Cir. 2002).

Bansal and Agarwal entered offsetting orders for the purchase and sale of the same delivery month of the same futures contract that achieved wash results. Additionally, Bansal and Agarwal knowingly entered into the purchase and sale of these futures contracts for the purpose of negating market risk. In doing so, Bansal and Agarwal violated Section 4c(a)(1) and (2) of the Act by entering into transactions of the character of, and commonly known as, wash sales.

Bansal engaged in the foregoing acts within the scope of his employment, office, or agency with Aralia. Therefore, pursuant to Section 2(a)(l)(B) of the Act, 7 U.S.C. § 2(a)(l)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2020), Aralia is liable for Bansal's violations of Section 4c(a)(l) and (2) of the Act.

Similarly, Agarwal engaged in the foregoing acts within the scope of his employment, office, or agency with Vintage. Therefore, pursuant to Section 2(a)(l)(B) of the Act, and Regulation 1.2, Vintage is liable for Agarwal's violations of Section 4c(a)(l) and (2) of the Act.

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

Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2020), 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) (structuring and transferring positions between proprietary accounts constituted violations of Regulation 1.38(a)).

Because Bansal and Agarwal structured and entered the offsetting orders with the intent that they would offset Respondents' original bids or offers and negate risk, the executions of these orders were not open and competitive. Thus, because they engaged in noncompetitive trades, Bansal and Agarwal violated Regulation 1.38(a).

Bansal engaged in the foregoing acts within the scope of his employment, office, or agency with Aralia. Therefore, pursuant to Section 2(a)(l)(B) of the Act and Regulation 1.2, Aralia is liable for Bansal's violations of Regulation 1.38(a).

Similarly, Agarwal engaged in the foregoing acts within the scope of his employment, office, or agency with Vintage. Therefore, pursuant to Section 2(a)(l)(B) of the Act and Regulation 1.2, Vintage is liable for Agarwal's violations of Regulation 1.38(a).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondents violated Section 4c(a)(l) and (2) of the Act, 7 U.S.C. § 6c(a)(l), (2) (2018), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2020).

V. OFFER OF SETTLEMENT

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

A. Acknowledge service of this Order;

B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;

C. Waive:

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

2. A hearing;

3. All post-hearing procedures;

4. Judicial review by any court;

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

6. Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018), and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2020), relating to, or arising from, this proceeding;

7. Any and all claims that they 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

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, including this Order;

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

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

1. Makes findings by the Commission that Respondents violated Section 4c(a)(l) and (2) of the Act, 7 U.S.C. § 6c(a)(l), (2) (2018), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2020);

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

3. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of one-hundred thousand dollars ($100,000), plus post-judgment interest;

4. Orders Respondents and their 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.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondents shall cease and desist from violating Section 4c(a)(l) and (2) of the Act, 7 U.S.C. § 6c(a)(l), (2) (2018), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2020).

2. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of one-hundred thousand dollars ($100,000) ("CMP Obligation"). If the CMP Obligation is not paid within ten days, 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 (2018).

Respondents 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, Respondents shall contact Jamie Stovall or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying 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, DC 20581.

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

    1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

    2. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their 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.

    3. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to their 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.

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

Dated: December 27, 2021