

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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2:33 pm, Sep 27, 2013

In the Matter of:

**R.J. O'BRIEN & ASSOCIATES
LLC,**

Respondent.

CFTC Docket No. 13-40

**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 from on or about February 10, 2012 to on or about February 13, 2012, (the "Relevant Period"), R.J. O'Brien & Associates LLC ("RJO" or "Respondent") violated Commission Regulation ("Regulation") 30.7(d), 17 C.F.R. § 30.7(d) (2012). 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 violation set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

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

III.

The Commission finds the following:

A. SUMMARY

RJO, a futures commission merchant (“FCM”) registered with the Commission as such, unlawfully commingled secured foreign futures and options customer funds with segregated domestic futures and options customer funds, although its conduct did not result in any loss to customers. On or about Friday, February 10, 2012, RJO made a transfer of funds from a non-clearing FCM’s secured foreign futures and options customer omnibus account, which was carried by RJO, to the non-clearing FCM’s segregated domestic futures and options omnibus account. RJO transferred the funds to reduce a margin deficiency in the segregated account. RJO transferred the funds from the non-clearing FCM’s secured account without making a margin call and without informing the non-clearing FCM that it was doing so.² The transfer caused the non-clearing FCM to have insufficient secured funds to meet its obligations to its foreign futures and options customers. As a result of the transfer, RJO commingled and deposited funds belonging to foreign futures or foreign options customers in the same account required to be separately accounted for and segregated for domestic futures and options customers, in violation of Commission Regulation 30.7(d).

Three days later, on Monday, February 13, 2012, the non-clearing FCM discovered the deficiency in its secured foreign futures and options customer account funds and requested that RJO reverse the transfer, which RJO did that morning. On that same day, the non-clearing FCM filed a notice of deficiency with the Commission pursuant to Regulation 1.12(h).

B. RESPONDENT

RJO is an FCM with its corporate headquarters located at 222 S. Riverside Plaza, Suite 900, Chicago, IL 60606. RJO has been continuously registered with the Commission as an FCM since 1977.

C. FACTS

On or about August 31, 2009, RJO entered into an omnibus account agreement and facilities management agreement with a non-clearing FCM (the “Account Agreements”), by which RJO agreed to maintain an omnibus account in commodities, futures and options through which the non-clearing FCM’s transactions with RJO would be effected. The non-clearing FCM obtained from RJO an acknowledgement letter in which RJO acknowledged, *inter alia*, that the account would hold both segregated domestic futures and options customer funds and secured

² Commission Regulation 30.1(d) defines “foreign futures and options customer omnibus account” as an account “in which the transactions of one or more foreign futures and foreign options customers are combined and carried in the name of the originating futures commission merchant rather than in the name of each individual foreign futures or foreign options customer.” 17 C.F.R. § 30.1(d) (2012).

foreign futures and options customer funds, in accordance with Regulations 1.20 and 30.7. RJO has since executed acknowledgement letters indicating that separate omnibus accounts have been set up for segregated and secured customer accounts.³

On or about Friday, February 10, 2012, RJO noted a margin deficiency of approximately \$1.7 million in the non-clearing FCM's segregated omnibus customer account as of February 9, 2012. On February 10, 2012, RJO transferred \$1,586,000 from the non-clearing FCM's secured omnibus customer account to the non-clearing FCM's segregated omnibus customer account to reduce, but not eliminate, the margin deficiency. RJO provided daily account information to the non-clearing FCM reflecting the deficiency in the segregated account as of February 9, 2012, but transferred the funds from the non-clearing FCM's secured account without making a margin call and without informing the non-clearing FCM that it was doing so. RJO transferred the funds without knowing whether they were part of the non-clearing FCM's secured amount, which was required by Regulation 30.7(a) to be maintained in a separate account and was prohibited by Regulation 30.7(d) from being commingled with segregated funds.

On or about Monday, February 13, 2012, in connection with preparing its regulatory filing as of February 10, 2012, the non-clearing FCM discovered that as a result of the transfer, it did not have sufficient secured funds to meet its obligations to its foreign futures and options customers. The non-clearing FCM contacted RJO and requested a reversal of the transfer, which RJO effected that morning. On the same day, the non-clearing FCM filed a notice with the Commission that as of February 10, 2012, the amount of funds set aside in its secured account for customers trading on non-U.S. markets fell below the amount required by Commission Regulations by approximately \$605,268.

RJO independently undertook an evaluation of its policies and procedures relating to customer segregated and secured accounts and made changes after it learned of these events. RJO also cooperated with the Commission's investigation.

³ On October 4, 2012, the Division of Swap Dealer and Intermediary Oversight of the Commission issued a letter to FCMs to clarify the record keeping requirements for customer segregated and secured funds maintained in carrying broker omnibus accounts. DSIO noted that a few FCMs maintained a single combined customer account with a carrying FCM for segregated and secured trading assets, with memo entries to denote the amount of segregated versus secured assets. DSIO noted that in order to ensure clear recordkeeping in accordance with Commission Regulations 1.20 and 30.7, an FCM must maintain separate omnibus accounts with a carrying FCM for segregated and secured customer trading and assets. The accounts must be clearly titled as segregated 1.20 or secured 30.7 funds held for the benefit of customers, and account acknowledgement letters must be obtained for each account. CFTC Release 6377-12 (Oct. 4, 2012).

IV.

LEGAL DISCUSSION

A. **Commingling of Secured Customer Funds In Violation of 30.7(d)**

Commission Regulation 30.7(d) states, in pertinent part, that “[i]n no event may money, securities or property representing the foreign futures or foreign options secured amount be held or commingled and deposited with customer funds in the same account or accounts required to be separately accounted for and segregated pursuant to section 4d of the Act and the regulations thereunder.”

RJO, as carrying broker and depository for a non-clearing FCM, violated Commission Regulation 30.7(d) when it transferred \$1,586,000 from the secured omnibus customer account, approximately \$605,268 of which represented foreign futures or foreign options secured customer funds, and held, commingled and deposited the secured customer funds with customer funds in the same account or accounts required to be separately accounted for and segregated pursuant to Section 4d of the Act and Regulation 1.20.⁴

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, RJO violated Commission Regulation 30.7(d).

VI.

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;

⁴ Section 4d(a)(2) of the Act and Regulation 1.20 require an FCM to treat and deal with all customer money, securities and property (“customer funds”) as belonging to such customers, to separately account for all customer funds, and to not commingle customer funds with the funds of the FCM or of any other person.

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 (2006) and 28 U.S.C. § 2412 (2006), 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 (2011), 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, 857-868 (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;
- 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 violated Commission Regulation 30.7(d), 17 C.F.R. § 30.7(d);
 2. orders Respondent to cease and desist from violating Commission Regulation 30.7(d), 17 C.F.R. § 30.7(d);
 3. orders Respondent to pay a civil monetary penalty in the amount of one hundred twenty five thousand dollars (\$125,000.00), plus post-judgment interest; 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 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 Commission Regulation 30.7(d), 17 C.F.R. § 30.7(d) (2012).
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred twenty five thousand dollars (\$125,000.00) within ten (10) days of the date of entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) 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 (2006). 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 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:

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) 954-5644

If payment is to be made by electronic funds transfer, Respondent shall contact Linda Zurhorst 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 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, D.C. 20581.

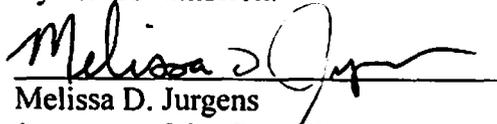
- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in 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

and its successors and assigns 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. **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 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.
3. **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 (10) calendar days of the change.
4. **Review and Training**: Respondent undertakes to regularly review its policies and procedures to ensure that they accurately reflect the current rules and regulations applicable to the treatment and handling of customer segregated and secured funds. In addition to training new employees upon joining the firm, Respondent undertakes to provide all employees with firmwide general compliance training, at least annually, as well as additional training to address specific compliance issues affecting each department.

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

By the Commission.



Melissa D. Jurgens
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 27, 2013