

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

In the Matter of	:	CFTC DOCKET NO. 01 - 11
	:	
Andy Saberi	:	COMPLAINT AND NOTICE
2240 Skyfarm Dr.	:	OF HEARING PURSUANT TO
Hillsborough, California 94010	:	SECTIONS 6(c) AND 6(d)
Respondent.	:	OF THE COMMODITY
	:	EXCHANGE ACT, AS AMENDED

I.

The Commodity Futures Trading Commission ("Commission") has received information from its staff that tends to show, and the Commission's Division of Enforcement ("Division") alleges, that:

SUMMARY

1. At the close of trading on August 14, 2000, Respondent Andy Saberi ("Saberi") held a net short position of ninety-three (93) August 2000 frozen pork belly futures contracts when the corresponding Chicago Mercantile Exchange ("CME") position limit stood at fifty (50) contracts. Saberi was warned of the position limit early in the trading session on August 14, 2000, but did not reduce his position until after receiving a second warning on August 15, 2000. Saberi profited substantially from the violation, which occurred during a period of significant market congestion.

RESPONDENT

2. Andy Saberi resides at 2240 Skyfarm Dr., Hillsborough, California 94010. Saberi has never been registered with the Commission in any capacity.

3. Saberi is an active and experienced retail speculator who, from time to time, has held reportable positions in various commodities contracts since at least 1992.

#### POSITION LIMITS

4. The CME, located at 30 South Wacker Drive, Chicago, Illinois, is a registered entity, and was, during the relevant period, a designated contract market for trading in frozen pork belly futures pursuant to Section 5 of the Commodity Exchange Act ("Act"), 7 U.S.C. § 7 (1994), as amended by the Commodity Futures Modernization Act of 2000, Appendix E to Pub. L. No. 106-554, 114 Stat. 2763 (2000).

5. During the calendar month of August 2000, CME Rule 8302(E) provided, in part, that an individual's position in frozen pork belly futures contracts "[a]s of the close of business on the sixth business day following the first Friday of the contract month" was limited to no more than fifty (50) contracts if the deliverable supply was 399 contracts or less.

6. The Commission approved the CME position limits set forth in CME Rule 8302(E) on May 5, 1998.

7. During the calendar month of August 2000, the deliverable supply available pursuant to CME Rule 8302(E) for the August 2000 frozen pork belly futures contract was 399 contracts or less.

8. During the calendar month of August 2000, CME Rule 8302(F) provided, in part, that the positions of all accounts directly or indirectly owned or controlled by a person should be aggregated for purposes of CME Rule 8302(E) calculations.

## CONTROL AND FUNDING OF RESPONDENT'S ACCOUNTS

9. On or about October 11, 1989, Saberi opened and began trading a commodity account ("Dean Witter account") at Dean Witter Reynolds Inc., presently known as Morgan Stanley Dean Witter ("Dean Witter"), a registered futures commission merchant ("FCM").
10. Saberi provided all funding for the Dean Witter account and controlled the account from its inception to the present.
11. On or about January 6, 1992, Saberi opened and began trading a second commodity account ("ED&F Man account") at Jack Carl/312 Futures, now a division of ED&F Man International, Inc. ("ED&F Man"), a registered FCM.
12. Saberi provided all funding for the ED&F Man account and controlled the account from its inception to the present.

## COUNT ONE

### VIOLATION OF SECTIONS 4a(e) OF THE ACT: SABERI EXCEEDED EXCHANGE POSITION LIMITS

13. Paragraphs 1 through 12 are re-alleged and incorporated herein by reference.
14. At the close of trading on August 14, 2000, the CME Rule 8302(E) position limit for August 2000 frozen pork belly futures contracts stood at fifty (50) contracts.
15. At the commencement of trading on August 14, 2000, Saberi held a net short position of eighty-three (83) August 2000 frozen pork belly contracts.
16. Early in the trading session on August 14, 2000, Saberi's Dean Witter account executive advised him of the CME Rule 8302(E) limit for August 2000 frozen pork belly futures contracts.
17. Saberi had sufficient time and ability to comply with the applicable CME Rule 8302(E) position limit prior to the close of trading on August 14, 2000.

18. At the close of trading on August 14, 2000, Saberi held a net short position of ninety-three (93) August 2000 frozen pork belly futures contracts.
19. Saberi's short position in August 2000 frozen pork belly futures contracts at the close of trading on August 14, 2000 exceeded the CME Rule 8302(E) position limit for that contract.
20. Section 4a(e) of the Act, 7 U.S.C. § 6(a)(e) (1994) as amended, prohibits, inter alia, any person from holding futures positions in excess of established position limits if those limits have been approved by the Commission.
21. By the acts alleged in this count, Saberi violated Section 4a(e) of the Act and profited unlawfully from that violation.
22. Each date on which Saberi held or controlled pork belly futures positions in excess of the CME's trading limits constitutes a separate violation of Section 4a(e) of the Act.

## II.

By reason of the foregoing allegations by the Division, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute administrative proceedings to determine whether the allegations set forth in Part I, above, are true and, if so, whether an appropriate order should be entered in accordance with Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9 and 13b (1994).

Section 6(c) of the Act allows the Commission to enter an order: (1) prohibiting a respondent from trading on or subject to the rules of any registered entity and requiring all registered entities to refuse such person all privileges thereon for such period as may be specified in the Commission's Order, (2) if such respondent is registered with the Commission in any capacity, suspending, for a period not to exceed six months, or revoking

the registration of that respondent, and (3) assessing against the respondent a civil penalty of not more than the higher of \$110,000 or triple the monetary gain to the respondents for each violation of the Act or Regulations committed after November 27, 1996.

Section 6(d) allows the Commission to enter an Order directing that the respondent cease and desist from violating the provisions of the Act and Regulations found to have been violated.

### III.

WHEREFORE, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence and hearing arguments on the allegations set forth in Section I, above, be held before an Administrative Law Judge, in accordance with the Rules of Practice under the Act, 17 C.F.R. § 10.1 et seq. (2001), at a time and place to be fixed as provided in Section 10.61 of the Rules, and that all post-hearing procedures shall be conducted pursuant to Sections 10.81 through 10.107 of the Rules of Practice, 17 C.F.R. §§ 10.81 through 10.107.

IT IS FURTHER ORDERED that the Respondent shall file an Answer to the allegations against the Respondent in the Complaint within twenty (20) days after service, pursuant to Section 10.23 of the Rules of Practice, 17 C.F.R. § 10.23, and pursuant to Section 10.12(a) of the Rules of Practice, 17 C.F.R. § 10.12(a), shall serve two copies of such Answer and of any document filed in this proceeding upon Scott R. Williamson, Deputy Regional Counsel, or David M. Cole, Trial Attorney, Commodity Futures Trading Commission, Division of Enforcement, 300 South Riverside Plaza, Suite 1600-N, Chicago, Illinois 60606, or upon such other counsel as designated by the Division. If the Respondent fails to file the required Answer or fails to appear at a hearing after being duly served, the

Respondent shall be deemed in default, and the proceeding may be determined against the Respondent upon consideration of the Complaint, the allegations of which shall be deemed true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served on the Respondent personally or by certified or registered mail forthwith pursuant to Section 10.22 of the Commission's Rules, 17 C.F.R. § 10.22 (2001).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of the investigative or prosecutorial functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter, except as witness or counsel in proceedings held pursuant to notice.

Date: June 26, 2001

By the Commission.

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Jean Webb  
Secretary of the Commission  
Commodity Futures Trading Commission