

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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: **CFTC DOCKET NO. 02-05**
: **COMPLAINT AND NOTICE OF**
: **HEARING PURSUANT TO**
: **SECTIONS 6(c), 6(d) AND 8a(4)**
: **OF THE COMMODITY**
: **EXCHANGE ACT**
:
: **Respondent.**
:
:
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The Commodity Futures Trading Commission (the “Commission”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (the “Division”) alleges, that:

I. SUMMARY

1. During 1998, Patrick Ligammari (“Ligammari”), an associated person (“AP”) and branch manager of REFCO, Inc. (“REFCO”), previously LFG, LLC (“LFG”), used non-bona fide silver exchange for physical transactions (“EFPs”) to facilitate the transfer of over \$300,000.00 between two foreign accounts under common control and ownership, in violation of Section 4c(a), formerly 4c(a)(A) and (B), of the Commodity Exchange Act (the “Act”) and Commission Regulation (“Regulation”) 1.38.
2. Furthermore, by violating Section 4c(a) of the Act as described above, Ligammari violated a Commission cease and desist order issued against Ligammari on April 17, 1990, and thus has violated Section 6(c) of the Act.
3. In addition, Ligammari reported non-bona fide prices of silver futures trades, in violation of Section 4c(a) of the Act.

II. RESPONDENT

4. Patrick Peter Ligammari, who resides at 69 Laredo Avenue, Staten Island, New York, is currently a registered AP and branch manager of REFCO. Ligammari was registered as an AP of Balfour Maclaine Futures Inc. (“Balfour Maclaine”) from approximately June 1986 until November 1990, and as an AP of LFG from approximately June 1995 until June 2000, when LFG was acquired by REFCO.

III. FACTS

A. The Commission’s Cease and Desist Order of April 17, 1990

5. In October 1989, the Commission issued a Complaint alleging that Ligammari and others violated, *inter alia*, Section 4c(a)(A) of the Act by simultaneously entering orders to buy and sell equal quantities of the same contract and future at the market or at identical prices on behalf of certain Japanese foreign broker accounts for which Ligammari was the account executive.

6. The Complaint further alleged that Ligammari and the other respondents knew or should have known that the transactions were ordered and executed with the intent to avoid taking bona fide positions in the market.

7. On April 17, 1990, the Commission issued an opinion and order accepting offers of settlement from Ligammari and others. In the Matter of Balfour Maclaine Futures, et al., Opinion and Order Accepting Offers of Settlement of Balfour Maclaine Futures, Inc., Balfour Maclaine Int’l (U.K.), Ltd., Patrick P. Ligammari, Leonel Roche and Joseph Mancine, CFTC Docket No. 90-1 (April 17, 1990) (the “April 1990 Order”). Attached as Exhibit A.

8. In its April 1990 Order, the Commission found that Ligammari had violated Section 4c(a)(A) of the Act as alleged in the Complaint and ordered:
- (a) Ligammari to cease and desist from violating Section 4c(a)(A) of the Act;
 - (b) joint payment by Ligammari and other respondents of a \$150,000 civil penalty; and
 - (c) a suspension of Ligammari's registration as an AP for a period of three weeks.

B. Respondent's Activities After the Issuance of the April 1990 Order

9. In April 1997, at the request of Yoshihiko Narimatsu ("Narimatsu"), Ligammari opened a house omnibus account at LFG for C&P Index Corp. ("C&P Corp.") located in Tokyo, Japan.
10. Narimatsu was identified at that time as the President of C&P Corp.
11. Ligammari was the account executive for the C&P Corp. house omnibus account.
12. On or about February 9, 1998, Narimatsu opened an account for C&P (H.K.) Company ("HK Company"), an incorporated sole proprietorship in Hong Kong.
13. Narimatsu was identified at that time as the President of HK Company, and as having a 10 percent or greater interest in the C&P Corp. house omnibus account.
14. Ligammari was the account executive for the HK Company account.
15. Ligammari was aware that the HK Company was a sole proprietorship and that Narimatsu was the President.
16. Ligammari also was aware that Narimatsu owned a 10 percent or greater interest in the C&P Corp. house omnibus account.

17. On March 6 and 9, 1998, a total of \$125,000 was wired to the C&P Corp. house omnibus account, and on March 6, 1998, \$25,000 was wired to the HK Company account.

18. Prior to March 6, 1998, both accounts had zero balances and no open positions.

19. Trading in each of these accounts began March 10, 1998, when equal and opposite positions in silver futures contracts were executed for both accounts.

20. On March 13, 1998, Ligammari offset the futures positions in both accounts through an EFP during COMEX normal trading hours, which resulted in a profit for the HK Company account and a loss for the C&P Corp. account.

21. An EFP is a transaction in which the buyer of a physical commodity transfers to the seller a corresponding amount of long futures contracts or receives from the seller a corresponding amount of short futures, at a price difference mutually agreed upon. In the case of a contingent EFP such as those involved here, the trades do not result in an actual transfer of ownership of the physical commodity.

22. COMEX rules prohibit EFPs between commonly owned or controlled accounts and prohibit the execution of contingent EFPs executed during floor trading hours.

23. Simultaneous with the EFP, Ligammari placed a transaction for the same quantity as the silver EFP to offset the physical component of the EFP. Thus, the physical component of the EFP did not result in an actual transfer of ownership of physical silver.

24. This trading pattern, *i.e.*, putting on equal and opposite positions in silver futures contracts for both accounts and then offsetting those positions through the use during COMEX normal trading hours of an EFP plus an offsetting silver position, resulting in a profit for the HK Company account and a loss for the C&P Corp. account, continued in both accounts until May 5, 1998.

25. Between March 11 and May 5, 1998, Ligammari executed fourteen EFPs, that conformed to this trading pattern, for the C&P Corp. and HK Company accounts, a list of which are attached as Exhibit B, each resulting in profits to the HK Company account, and losses to the C&P Corp. account, in the total amount of approximately \$375,000.

26. During the period of the fourteen EFPs executed by Ligammari, the HK Company and C&P Corp. accounts were commonly owned.

IV. VIOLATIONS OF THE ACT AND REGULATIONS

COUNT ONE

VIOLATIONS OF SECTION 4c(a) OF THE ACT: WASH SALES

27. Paragraphs 1 through 26 are realleged and incorporated herein by reference.

28. Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (1994), makes it unlawful for any person to offer to enter into, enter into or confirm the execution of a transaction for future delivery which is, is of the character of, or is commonly known to the trade as, a wash sale transaction.

29. Between March 11 and May 5, 1998, Ligammari entered into silver contracts for future delivery and executed silver EFPs together with additional silver transactions that ensured futures profits in one account and nearly equivalent futures

losses in another account. Ligammari structured these trades and executed them with the intent to avoid making a bona fide trade or taking a bona fide position, and therefore, they were wash sale transactions, in violation of Section 4c(a) of the Act.

30. Each and every transaction in which Ligammari offered to enter into, entered into, or confirmed the execution of a wash sales transaction, is alleged as a separate and distinct violation of Section 4c(a) of the Act.

COUNT TWO
VIOLATIONS OF SECTION 4c(a) OF THE ACT:
REPORTING, REGISTERING OR RECORDING PRICES
WHICH ARE NOT TRUE OR BONA FIDE

31. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

32. Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (1994), makes it unlawful to confirm the execution of any commodity futures transaction if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

33. Between March 11 and May 5, 1998, Ligammari executed noncompetitive silver futures trades for which the prices that were reported were not bona fide, in violation of Section 4c(a)(B) of the Act.

34. Each and every transaction for which Ligammari caused prices to be reported, registered, or recorded that were not true and bona fide prices is alleged as a separate and distinct violation of 4c(a) of the Act.

COUNT THREE
VIOLATIONS OF COMMISSION REGULATION 1.38:
NONCOMPETITIVE TRADING

35. Paragraphs 1 through 34 are realleged and incorporated herein by reference.

36. Commission Regulation 1.38, 17 C.F.R. § 1.38 (2001), requires that all purchases and sales of any commodity for future delivery, and all sales of any commodity option, on or subject to the rules of a contract market shall be executed openly and competitively by open outcry or posting of bids and offers or by other equally open and competitive methods, in the trading pit or ring or similar place provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity or commodity option except for noncompetitive transactions executed in accordance with exchange rules.

37. EFPs are noncompetitive transactions permitted by the COMEX provided they are executed in accordance with exchange rules.

38. COMEX rules prohibit EFPs between commonly owned or controlled accounts and prohibit the execution of contingent EFPs executed during floor trading hours.

39. Ligammari executed EFPs between commonly owned or controlled accounts and executed contingent EFPs during floor trading hours, in violation of COMEX rules for these noncompetitive transactions, and thereby violated Regulation 1.38.

40. Each and every noncompetitive, non-bona fide transaction that Ligammari executed is alleged as a separate and distinct violation of Regulation 1.38.

COUNT FOUR
VIOLATION OF THE COMMISSION'S APRIL 1990 ORDER AND
SECTION 6(c) OF THE ACT

41. Paragraphs 1 through 40 are realleged and incorporated herein by reference.

42. On April 17, 1990, the Commission issued an Order directing Ligammari to cease and desist from violating Section 4c(a)(A) of the Act.

43. By virtue of the conduct described in paragraphs 9 through 24, Ligammari has engaged in acts and practices in violation of the Commission's April 1990 Order, and is thereby in violation of Section 6(c) of the Act, 7 U.S.C. § 9, 15 (1994).

V.

By reason of the foregoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute public administrative proceedings to determine whether allegations set forth in Parts I-IV above are true, and, if so, whether an appropriate order should be entered in accordance with Sections 6(c), 6(d), and 8a(4) of the Act, 7 U.S.C. §§ 9, 15, 13b and 12a(4) (1994).

Section 6(c) allows the Commission to enter an order (1) prohibiting a respondent from trading on or subject to the rules of any restricted entity and requiring all restricted entities to refuse such person all privileges thereon for such a period as may be specified in the Commission's Order, (2) if the 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, (3) assessing against the respondent a civil penalty not more than the higher of \$110,000 or triple the monetary gain to the respondent for each violation of the Act or Regulations committed after November 27,

1996, and (4) requiring restitution to customers of damages proximately caused by the violations of the respondent.

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.

Section 8a(4) allows the Commission to suspend, to revoke or to place restrictions upon the registration of any respondent if cause exists for such action.

VI.

WHEREFORE, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence and hearing arguments on the allegations set forth in Parts I-IV 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 of Practice, 17 C.F.R. § 10.61 (2001), 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 (2001).

IT IS FURTHER ORDERED that Ligammari shall file an Answer to the allegations against him 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 (2001), and pursuant to Section 10.12(a) of the Rules of Practice, 17 C.F.R. § 10.12(a) (2001), shall serve two copies of such Answer and of any document filed in this proceeding upon Paul Hayeck or Jason Gizzarelli, Trial Attorneys, Commodity Futures Trading Commission, Division of Enforcement, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, or upon such other counsel as may be designated by the Division. If Ligammari fails to

file the required Answer or fails to appear at a hearing after being duly served, he shall be deemed in default, and the proceeding may be determined against him upon consideration of the Complaint, the allegations of which shall be deemed to be true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served on Ligammari 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.

By the Commission.

Catherine D. Dixon
Secretary to the Commission
Commodity Futures Trading Commission

Date: February 11, 2002