

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

**In the Matter of:**

**PRUDENTIAL SECURITIES  
INCORPORATED, et al.,**

**Respondents.**

**CFTC Docket No. 97-8**

**ORDER MAKING FINDINGS AND  
IMPOSING REMEDIAL SANCTIONS  
AS TO RESPONDENT PRUDENTIAL  
SECURITIES INCORPORATED**

**I.**

On May 20, 1997, the Commodity Futures Trading Commission (“Commission”) filed a Complaint and Notice of Hearing (“Complaint”) against Prudential Securities Incorporated (“PSI”) and others. The Complaint charges that PSI violated Section 4g of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. § 6g, and Commission Regulations 1.31(a), 1.35(a), 1.35(a-1)(1), and 166.3, 17 C.F.R. §§ 1.31(a), 1.35(a), 1.35(a-1)(1), and 166.3.

**II.**

In order to dispose of the allegations and issues raised in the Complaint as to it, PSI has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the allegations of the Complaint or the findings herein, PSI acknowledges service of this Order Making Findings and Imposing Remedial Sanctions (“Order”). PSI consents to the use of the findings contained in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.<sup>1</sup>

---

<sup>1</sup> PSI does not consent to the use of the Offer or this Order, or the findings to which it has consented in the Offer, as the sole basis for any other proceeding brought by the Commission other than a proceeding brought to enforce the terms of this Order. Nor does PSI consent to the use of the Offer, this Order, or the findings consented to in the Offer by any other party in any other proceeding. The findings to which PSI has consented in the Offer, as contained in this Order, are not binding on any other person or entity named as a respondent or defendant in this or in any other proceeding.

### III.

The Commission finds the following:

#### A. SUMMARY

From May 1993 through March 1994, certain registered Associated Persons (“APs”) of PSI, while trading Frozen Concentrated Orange Juice (“FCOJ”) futures contracts on the Citrus Associates of the New York Cotton Exchange (“CANYC”), entered, or caused other registered APs of PSI to enter, customer orders without providing account identification.

PSI, through the acts of certain of its registered APs, violated Section 4g of the Act, and Commission Regulations 1.31(a), 1.35(a), and 1.35(a-1)(1), by failing to fully and properly prepare contemporaneous records of customer orders and by failing to retain or produce certain required records of customer orders.

#### B. SETTLING RESPONDENT

Prudential Securities Incorporated, is a Delaware corporation with its principal place of business at One Seaport Plaza, New York, New York 10292. At all times relevant to the Complaint, and through the present, PSI has been registered with the Commission as a futures commission merchant.

#### C. FACTS

From May 1993 through March 1994, certain registered APs of PSI accepted orders, or caused other registered APs at PSI to accept orders, from certain customers for trades involving FCOJ futures without immediately preparing a written record of the customer orders that included account identification and the time, within the nearest minute, the order was received. The APs then entered, or caused other APs to enter, orders to the trading floor of the CANYC without providing account identification to the floor broker and without recording account identification on the office orders at the time.

Certain of PSI’s APs, also failed to retain and produce unfilled or canceled customer orders prepared by certain APs during the period of May 1993 through March 1994.

#### D. LEGAL DISCUSSION

Pursuant to Section 4g of the Act and Regulation 1.31, an FCM is required to maintain books and records, including original records of orders for customer accounts, for a period of five years, and to make those records available for inspection. Regulation 1.35(a) specifies that unfilled and canceled office order tickets are among the records that are required to be retained and produced for inspection. Regulation 1.35(a-1)(1) requires that upon receipt of a customer order, an FCM shall prepare a written record of such

order, including the account identification and order number, and shall record on the order the date and time, to the nearest minute, the order is received. Failing to place account identification on order tickets immediately upon receipt of orders “provide[s] an opportunity to direct profitable fills to favored accounts.” *In re GNP Commodities, Inc.* [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,360, at 39,214 (CFTC August 11, 1992), *aff’d sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993) (“*GNP*”).

Certain of PSI’s APs failed to prepare properly written records of customer orders and also failed to retain and produce such records for inspection. Under the Act, the FCM is held responsible for the recordkeeping of its employees. *See GNP, supra*, ¶ 25,360 at 39217-218. PSI, through the acts of its employees, therefore violated Section 4g of the Act and Regulations 1.31(a), 1.35(a), and 1.35(a-1)(1).

#### IV.

In the course of negotiations with PSI, PSI represented that it instituted policies and procedures designed to strengthen its supervisory system. PSI’s New York Futures Office Branch collects a copy of the filled order ticket in approximately 30 minute intervals during the trading day and examines them to ensure that the tickets have proper time stamps and account identifiers. The Branch Administrative Manager signs the filled and unfilled order tickets and, in the case of employee trades, the Branch Office Manager signs the employee filled and unfilled order tickets. The Chicago Futures Office Branch receives the filled and unfilled order tickets from non-New York futures desks (including Chicago, Minneapolis, and Kansas City) on a daily basis, where they are reviewed by either a Branch Office Manager or a Branch Administrative Manager. In addition to these procedures, PSI issues periodic memoranda reminding the Futures Managers in all PSI offices and others with similar responsibilities for PSI’s futures floor operations that proper procedures must be followed with regard to time stamping and account identifiers. As used in this Order, Branch Administrative Manager and Branch Office Manager shall mean those persons and their designees.

In Chicago, most orders sent to the floor dealing with commodity interests are sent to PSI employees on the floor for handling, whereas in New York, most orders dealing with commodity interests are sent to independent floor brokers. PSI floor employees are required to sign an acknowledgement that they will not accept orders without account identifiers at the time an order is placed and that they will notify the PSI floor supervisor if a PSI employee attempts to do so. The PSI Manager of New York Floors also requires independent floor brokers (other than those executing an occasional trade for PSI) to sign a similar acknowledgement.

In both Chicago and New York Futures Offices, prior approval from the Branch Office Manager is required for Financial Advisors in those Offices who trade the same commodity for their own account as for the account of customers. PSI also uses reports that track such activities.

In addition to utilizing these procedures, PSI has training requirements under which Branch Office Managers in PSI's Futures Offices and in its retail Branches where futures transactions provide in excess of the lesser of 10% of gross commissions or \$500,000 in gross commissions in that retail Branch are required to undergo either initial or refresher training concerning futures sales supervision.

## V.

### OFFER OF SETTLEMENT

PSI has submitted an Offer of Settlement in which it neither admits nor denies the allegations of the Complaint or the findings in this Order. Subject to the foregoing, PSI: acknowledges service of the Complaint and this Order and admits the jurisdiction of the Commission with respect to the matters set forth in the Complaint and this Order; waives: (1) a hearing; (2) all post-hearing procedures; (3) judicial review by any court; (4) any objection to the staff's participation in the Commission's consideration of the Offer; (5) all claims which it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 863, and Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.*, relating to or arising from this action; and (6) any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.

PSI stipulates that the record basis on which this Order is entered consists of the Complaint, this Order and the findings to which it has consented in its Offer, which is incorporated in this Order. PSI consents to the Commission's issuance of this Order, which makes findings as set forth herein, and orders PSI to cease and desist from violating the provisions of the Act and the Regulations it is found to have violated; orders that PSI shall be liable for payment of a civil monetary penalty of sixty-five thousand dollars (\$65,000); and orders PSI to comply with its undertakings as set forth in the Offer and this Order.

## VI.

### FINDING OF VIOLATIONS

Solely on the basis of the consent evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that PSI violated Section 4g of the Act and Regulations 1.31(a), 1.35(a), and 1.35(a-1)(1).

## VII.

### ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. PSI shall cease and desist from violating Section 4g of the Act and Regulations 1.31(a), 1.35(a), and 1.35(a-1)(1);

B. PSI shall pay a civil monetary penalty in the amount of sixty-five thousand dollars (\$65,000) within ten (10) days of the date of the entry of this Order. PSI shall make such payment by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and addressed to Dennese Posey, Division of Enforcement, at 1155 21<sup>st</sup> Street, N.W., Washington D.C. 20581 under cover of a letter that identifies PSI and the name and docket number of the proceeding. A copy of the cover letter and the form of payment shall be simultaneously transmitted to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, N.W., Washington D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2)(2001), if this amount is not paid in full within fifteen (15) days of the due date, PSI shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of the payment has been made;

C. PSI shall comply with its undertakings, as set forth in its Offer:

1. PSI shall cooperate with the staff of the Commission in the continuing litigation of this matter concerning the remaining respondents. As part of such cooperation, PSI agrees, subject to all applicable privileges, to comply fully, promptly, and truthfully to any inquiries or requests for information including but not limited to (1) requests for authentication of documents; (2) requests for any documents relevant to this matter within PSI's possession, custody, or control, including inspection and copying of documents; (3) requests for agents and employees of PSI to testify completely and truthfully to the Division; (4) requests to produce any current (as of the time of the request) officer, director, or employee of PSI, regardless of the employee's location, for interviews, depositions, or testimony, and to provide testimony(including witness preparation) related to any trial related to the subject matter of this proceeding; and (5) requests for assistance in locating and contacting any prior (as of the time of the request) officer, director, or employee of PSI; and
2. Neither PSI nor any of its employees, agents, or representatives shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or finding in the Order, or creating, or

tending to create, the impression that the Complaint or Order is without a factual basis; provided, however, that nothing in this provision affects PSI's: (i) testimonial obligations; or (ii) right to take appropriate legal positions in other proceedings to which the Commission is not a party.

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

By the Commission.

---

Jean A. Webb  
Secretary to the Commission  
Commodity Futures Trading Commission

Dated: October 9, 2002