

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:

CARR FUTURES INC.,

Respondent.

CFTC Docket No. 03-10-31
ORDER INSTITUTING
PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF THE
COMMODITY EXCHANGE ACT, AS
AMENDED, MAKING FINDINGS
AND IMPOSING REMEDIAL
SANCTIONS

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Carr Futures Inc. ("Carr") has violated Section 4g of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 6g (2000) and Commission Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31 and 1.35 (2002). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether Carr has engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of this administrative proceeding, Carr 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, Carr acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, As Amended, Making Findings and Imposing Remedial Sanctions ("Order"). Carr 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.¹

¹ Carr 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 Carr 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 Carr 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

During the course of an investigation of trade practice violations by a floor broker, the Commission's Division of Enforcement ("Division") requested that Carr, a registered futures commission merchant ("FCM"), produce its cancelled and unfilled order tickets for its customers' futures orders in the Chicago Mercantile Exchange's S&P 500 Stock Index ("S&P") futures contract. Carr was unable to produce these records for 52 of the 118 requested dates. Carr's failure to produce these records impaired the Division's ability to fully investigate the floor broker's order-filling activities.

B. SETTLING RESPONDENT

Carr Futures Inc., whose main office is located at 10 S. Wacker Dr., Suite 1100, Chicago, Illinois 60606, has been registered with the Commission as an FCM since August 12, 1987.

C. FACTS

Between March 7, 2000 and February 12, 2002, in the course of a private investigation of an independent floor broker who had previously filled the majority of Carr's institutional customers' lead-month S&P futures orders, the Division issued several formal document requests to Carr, pursuant to Section 4g of the Act and Regulations 1.31 and 1.35, requesting Carr to produce its original cancelled and unfilled order tickets for S&P futures contracts for approximately 118 trade dates between July 1998 and February 2000. Carr was unable to locate and did not produce the original cancelled and unfilled order tickets for 52 of the requested dates.

This was a serious recordkeeping failure that concerned required records directly relevant to the Division's investigation of the floor broker. The floor broker had an exchange disciplinary history that included taking trades that he had filled for customer orders into his error account while returning the customers' orders as unfilled. Among other things, the requested records were relevant to the Division's efforts to determine whether the floor broker was engaging in potentially illegal trade practices and to test the investigative testimony given by the floor broker.

D. LEGAL DISCUSSION

Section 4g of Act and Regulation 1.35(a) require futures commission merchants to keep records of all transactions relating to their business of dealing in commodity futures contracts, to retain them as required by Regulation 1.31 and to produce them for inspection as requested by Commission representatives. Unfilled and canceled office order tickets are among the records that are required to be retained and produced for inspection pursuant to Regulation 1.35(a). Regulation 1.31 requires that all required

books and records be kept for a period of five years and that they shall be readily accessible during the first two years of the five-year period. Carr failed to retain and produce its unfilled and cancelled orders in violation of Section 4g of the Act and Regulations 1.31 and 1.35.

IV.

OFFER OF SETTLEMENT

Carr 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, Carr: acknowledges service of 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. 862-633, 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.

Carr stipulates that the record basis on which this Order is entered consists of this Order and the findings to which it has consented in its Offer, which is incorporated in this Order. Carr consents to the Commission's issuance of this Order, which makes findings as set forth herein, and orders Carr to cease and desist from violating the provisions of the Act and the Regulations it is found to have violated; orders that Carr shall be liable for payment of a civil monetary penalty of seventy-five thousand dollars (\$75,000); and orders Carr to comply with its undertaking as set forth in the Offer and this Order.

V.

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 Carr violated Section 4g of the Act and Regulations 1.31 and 1.35.

VII.

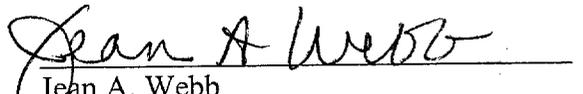
ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Carr shall cease and desist from violating Section 4g of the Act and Regulations 1.31 and 1.35;
- B. Carr shall pay a civil monetary penalty in the amount of seventy-five thousand dollars (\$75,000) within ten (10) days of the date of the entry of this Order. Carr 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 21st Street, N.W., Washington D.C. 20581 under cover of a letter that identifies Carr 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)(2000), if this amount is not paid in full within fifteen (15) days of the due date, Carr 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; and
- C. Carr shall comply with its undertaking, as set forth in its Offer, that neither Carr nor any of its employees, agents, or representatives shall take any action or make any public statement denying, directly or indirectly, any allegation or finding in the Order, or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision affects Carr'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: April 22, 2003