

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Daniel J. Collins, Edward M. Collins,
Thomas M. Gianos, Bernard Miraglia,
and John R. Wade,

Respondents.

CFTC Docket No: 94-13

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AMENDED ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

On March 19, 1994, the Commodity Futures Trading Commission ("Commission") issued a Complaint and Notice of Hearing against Daniel J. Collins ("D. Collins"), Edward M. Collins ("E. Collins"), Thomas M. Gianos ("Gianos"), Bernard Miraglia ("Miraglia") and John R. Wade ("Wade") (and collectively "Respondents"), among others. The Complaint charges, *inter alia*, that Respondents violated Section 4c(a)(A) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 6c(a)(A) (1988 and Supp. IV 1992), and Commission Regulation 1.38(a), 17 C.F.R. §§ 1.38(a) (1993).¹ To resolve this matter, Respondents have each submitted Offers of Settlement ("Offers") that the Commission has determined to accept.

II.

Respondents acknowledge service of this Amended Order Making Findings and Imposing Remedial Sanctions ("Amended Order"). Without admitting or denying any of the findings contained in the Amended Order, and prior to any adjudication on the merits, Respondents consent to the entry of this Amended Order and to the use of the findings in this Amended Order only in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.²

¹ Citations are made to the Act and Regulations as they existed at the commencement of the action, except for Section VII, where respondents are ordered to cease and desist from violating current applicable provisions of the Act and Regulations.

² However, Respondents do not consent to the use of their Offers, this Order or Amended Order or these findings: (1) as the sole basis for any other proceeding brought by the Commission, other than a proceeding brought to enforce the terms of this offer; or (2) in any proceeding to which the Commission is not a party. The findings made in this Amended Order are not binding (footnote continued)

III.

The Commission finds the following:

A. Respondents

Daniel J. Collins currently resides in Schaumburg, Illinois. He has never been registered with the Commission in any capacity.

Edward M. Collins currently resides in Oxford, Wisconsin. He has never been registered with the Commission in any capacity.

Thomas M. Gianos currently resides in Park Ridge, Illinois. He has never been registered with the Commission in any capacity.

Bernard Miraglia currently resides in Palatine, Illinois. He has never been registered with the Commission in any capacity.

John R. Wade currently resides in Elk Grove Village, Illinois. He has never been registered with the Commission in any capacity.

B. Summary

During the period from December 1986 through December 1990, Respondents were account holders at Geldermann, Inc. ("Geldermann"), a registered futures commission merchant, and knowingly participated in a series of transfer trades which constituted fictitious sales in violation of Section 4c(a)(A) of the Act and noncompetitive trades in violation of Regulation 1.38(a).

B. Facts

At various times between 1986 and 1990, Thomas W. Collins maintained joint futures accounts at Geldermann with Respondents and others (collectively, "joint account owners"). Each of the joint accounts was opened at Geldermann by Thomas Collins and one of the joint account owners. The joint accounts were opened under the social security number of the joint account owners. No joint account had the same two owners. In addition to the joint accounts, Thomas Collins maintained two individual trading accounts at Geldermann from July 28, 1986 through December 31, 1990.

During this time, the rules of the MACE, the CBOT, and the CME restricted the use of transfer trades by the exchanges' clearing members. Specifically, each of the three exchanges permitted transfer trades between accounts carried on a clearing member's books only if no

(footnote continued)

on any other person or entity named as a defendant or respondent in any other proceeding nor are they binding on Respondents in any other proceeding to which the Commission is not a party.

change in ownership resulted from the transfer or if the transfer was needed to correct an error. The exchange rules do not provide a definition of what constitutes ownership.³

From October 1987 through September 1989, Thomas Collins established intermarket spread positions in one of his individual trading accounts at Geldermann. Thomas Collins maintained these intermarket spread positions in his individual accounts for various lengths of time, sometimes as long as six weeks, before transferring one or both legs of the spread positions to another account. After one or both legs were transferred to another account, Thomas Collins ordered the leg or legs liquidated. As a result, profits and losses were realized from the transferred legs in one of the joint accounts. All of these transfers were accomplished through book entries made by Geldermann and not in accordance with exchange rules regarding transfer trades. In each instance, the transferred positions were confirmed to the joint account owners by Geldermann as a purchase and sale made on the date and at the price of the original trade made by Thomas Collins.

In addition to the intermarket spread transfer trades, in 1986 and in 1989 and 1990, Thomas Collins and the Respondents established outright positions in their joint accounts or in Thomas Collins's individual accounts which, after remaining open for periods ranging from several days to several weeks, were transferred among the Respondents' accounts. As with the intermarket spread transfers, the transfers were accomplished through book entries made by Geldermann and not in accordance with exchange rules regarding transfer trades. Geldermann also issued confirmation statements to the Respondent owners of the receiving joint accounts showing that they had bought or sold commodity futures on the date and at the price of the original trade.

With respect to all the transfers, once a position was transferred from one account to another, it was then liquidated. In all of the intermarket spread trades, any profits realized by the joint accounts were moved back to Collins's individual trading accounts, either by check or through book entries made by Geldermann. All losses accruing to the joint accounts were reimbursed through the transfer of funds from Collins's individual accounts, effectuated through entries on Geldermann's books.

Geldermann reported to the Internal Revenue Service all profits and losses realized in the joint accounts under the social security number of the Respondents. However, in reality, the profits realized in the joint accounts were transferred to Thomas Collins's individual accounts either through accounting entries effected by Geldermann or through the deposit of checks drawn on the joint accounts, which were then endorsed by the appropriate joint account holder for the benefit of Thomas Collins. Similarly, losses realized in the joint accounts were reimbursed by transfers of funds from Thomas Collins's individual accounts through accounting entries effected by Geldermann.

³ The relevant rules were: CBT Regulation 444.1, MACE Regulation 927 and CME Rule 852.

IV. LEGAL DISCUSSION

A. Fictitious Sales

Section 4c(a)(A) of the Act makes it unlawful for any person to offer to enter into, enter into or confirm the execution of any transaction that "is, is the character of, or is commonly known to the trade as, a 'wash sale', 'cross trade', or 'accommodation trade', or is a fictitious sale." Congress viewed such transactions as "pure, unadulterated fraud." 80 Cong. Rec. 7905 (1936) (remarks of Senator Smith). By enacting Section 4c(a), Congress sought to "ensure that all trades are focused in the centralized marketplace to participate in the competitive determination of the price of the futures contracts." S. Rep. No. 93-1131, 93d Cong., 2d Sess. 16-17 (1974); *see also Merrill Lynch Futures, Inc. v. Kelly*, 585 F. Supp. 1245, 1251 n.3. (S.D.N.Y. 1984) (Section 4c(a)(A) was generally intended to prevent collusive trades conducted away from the pits). As a result, Section 4c broadly prohibits artificial trades intended to avoid the risks and price competition of the open market.

Section 4c(a)(A) of the Act does not define the general term "fictitious sale" or any of its other terms. Although the statutory language and legislative history evince a Congressional intent to ban all trading techniques that involve fictitious transactions, neither provides a precise definition of this general term. *In re Thomas Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,742 (CFTC Dec. 10, 1997); *In re Harold Collins*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,982 at 31,903 (CFTC Apr. 4, 1986). "Fictitious sale" is a general category which includes, at a minimum, the unlawful practices specifically enumerated in Section 4c(a) as well as prearranged trading. *Id.*; *In re Gimbel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,213 at 35,003 (CFTC Apr. 14, 1988). "The central characteristic of the general category of fictitious sales is the use of trading techniques that give the appearance of submitting trades to the open market while negating the risk or price competition incident to such a market." *Thomas Collins*, ¶ 27,194 at 45,742; *Harold Collins*, ¶ 22,982 at 31,902. "Fictitious sales" are defined as presenting a "false appearance coupled with market price circumvention." *Thomas Collins*, ¶ 27,194 at 45,742; *Harold Collins*, ¶ 22,982 at 31,903 n.34. The term "fictitious sales" includes those sales purportedly executed on an exchange which distort and/or mislead the commodity markets and their participants. *See In re Three Eight Corp.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,749 at 40,444-40,445 (CFTC June 6, 1993); *In re Bear, Stearns & Co.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,662 (CFTC Jan. 25, 1991); *In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,653 n.26 (CFTC Jan. 25, 1991); *In re Citadel Trading Co. of Chicago, Ltd.*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,082 at 32,190 (CFTC May 12, 1986).

The transfer trades here were part of an artificial trading scheme that falls well within the kind of fraudulent trading techniques described in *Harold Collins*. The alleged transfer trades enabled the transferring accounts and the recipient accounts to avoid the risks and price competition of the open market and withheld vital information from the market. Consequently, Respondents knowing participation in the scheme constituted violations of Section 4c(a)(A) of the Act.

B. Noncompetitive Trades

Office transfers or transfer trades are illegal under the Commodity Exchange Act unless made in accordance with exchange rules. Transfer trades in accordance with exchange rules are an exception to the general requirement that all futures transactions must be openly and competitively executed on an exchange as required by Sections 4(a) and 4c(a) of the Act. Commission Regulation 1.38(a) requires that futures and option transactions be "executed openly and competitively," but further provides that: this requirement shall not apply to transactions which are executed noncompetitively in accordance with written rules of the contracts market which have been submitted to and approved by the Commission, specifically providing for the noncompetitive execution of such transactions. Any such trades not executed in accordance with exchange rules are noncompetitive trades and violate Regulation 1.38. *Thomas Collins*, ¶ 27,194 at 45,743; *see also Williams v. Lind-Waldock*, No. 95-RO22 (CFTC July 10, 1997) (finding that an exchange for physicals not done in accordance with exchange rules violated Commission Regulation 1.38).

The office or transfer trades here were not done in accordance with exchange rules. Consequently, Respondents violated Commission Regulation 1.38.

V. OFFERS OF SETTLEMENT

Respondents have submitted individual Offers in which, without admitting or denying the findings herein, they acknowledge service of the Complaint, receipt of this Amended Order and admit the jurisdiction of the Commission with respect to the matters set forth in the Complaint and this Order. They further waive: (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) 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; and (6) all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and Part 148 of the Commission Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2004), relating to, or arising from this action.

Respondents stipulate that the record basis on which this Amended Order is entered consists solely of the Complaint, findings consented to in their Offers, and findings in this Amended Order, the entry of which they have consented to in the Offer. Respondents consent to the Commission's issuance of this Amended Order, which makes findings, as set forth herein, and orders that:

- (1) Respondents shall cease and desist from violating the provisions of the Act and Regulations that they have been found to have violated;
- (2) Respondents D. Collins, E. Collins, Miraglia and Wade shall be permanently prohibited from trading on or subject to the rules of any contract market;
- (3) Respondent Gianos, for a period of six months commencing on the third Monday after entry of the Amended Order, shall be prohibited from directly or indirectly trading on or subject to the rules of any contract market on behalf of himself or others, and after the end of the six month period, prohibits Gianos from directly or indirectly trading on or subject to the rules of

any contract market on behalf of any person other than himself and his immediate family (i.e., spouse, child, his parents, parents of his spouse, his siblings and their spouses); and

(4) Respondents shall comply with their undertakings as set forth in the Offer and incorporated in this Amended Order including, but not limited to agreeing:

(a) never to apply for registration or seek exemption from registration with the Commission in any capacity, except as provided for in Regulation 4.14(a)(9), and never to engage in any activity requiring registration or exemption from registration, unless such exemption is pursuant to Regulation 4.14(a)(9); and

(b) that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in this Amended Order or creating, or tending to create, the impression that the Complaint or this Amended Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party.

VI. FINDINGS OF VIOLATIONS

Solely on the basis of Respondents' consents, as evidenced by their Offers, and prior to any adjudication on the merits, the Commission finds that Respondents violated Section 4c(a)(A) of the Act, 7 U.S.C. §6c(a)(A) (1988 and Supp. IV 1992), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (1993).

VII. ORDER

Accordingly, it is hereby ordered that:

1. Respondents shall cease and desist from violating Section 4c(a)(1) of the Act, 7 U.S.C. §6c(a)(1) (2002), and Regulation 1.38(a), 17 C.F.R. § 1.38(b) (2004);

2. Respondents D. Collins, E. Collins, Miraglia and Wade are permanently prohibited from trading on or subject to the rules of any contract market; and all contract markets are directed to refuse those Respondents trading privileges thereon;

3. Respondent Gianos, for a period of six months commencing on the third Monday after entry of the Amended Order, is prohibited from directly or indirectly trading on or subject to the rules of any contract market on behalf of himself or others and all registered contract markets are directed to refuse him trading privileges thereon for that period. After the end of the six month period, Gianos is prohibited from directly or indirectly trading on or subject to the rules of any contract market on behalf of any person other than himself and his immediate family (i.e., spouse, child, his parents, parents of his spouse, his siblings and their spouses); and

4. Respondents are to comply with their undertakings set forth in Section VIII below.

VIII. UNDERTAKINGS

In consideration of the Commission's acceptance of the Offers, and solely by virtue of the Offers, Respondents hereby undertake as follows:

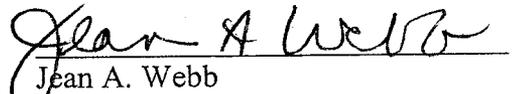
1. not to apply for registration or seek exemption from registration with the Commission in any capacity, and shall not engage in any activity requiring registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Commission Regulations, 17 C.F.R. § 4.14(a)(9); and

2. that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or findings or conclusions in this Amended Order or creating, or tending to create, the impression that the Complaint or this Amended Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party.

Unless otherwise specified, the provisions of this Amended Order shall be effective on this date.

By the Commission.

Date: July 20, 2004


Jean A. Webb
Secretary to the Commodity Futures
Trading Commission