

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of)
)
BYRON G. BIGGS,)
)
Respondent.)
_____)

CFTC Docket No. 04-22

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ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 6(c) AND 6(d) OF THE
COMMODITY EXCHANGE ACT, MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Byron G. Biggs (“Biggs” or “Respondent”) has violated Section 4c(a)(A) and (B) of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. § 6c(a)(A) and (B) (1994).¹ Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Biggs engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, the Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Without admitting or denying the findings of fact herein, the Respondent consents to the entry of this Order in full and final settlement of any alleged violations of the Act or regulations solely as they relate to the activities and conduct described in Section III below, and acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”). Respondent consents to the use by the Commission of the findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.²

¹ The conduct at issue here predates the December 21, 2000 effective date of the Commodity Futures Modernization Act (“CFMA”).

² Respondent does not consent to the use of this Offer or the findings in this Order as the sole basis for any other proceeding brought by the Commission, other than a proceeding brought to enforce the terms of this Order. Respondent does not consent to the use of the Offer or the findings in this Order by any other person or entity in this or any other proceeding. The findings made in this Order are not binding on any other person or entity, including, but not limited to, any person or entity named as a defendant or respondent in any other proceeding.

III.

A. SUMMARY

On at least six occasions between April and June 2000, Biggs, then a trader on the west power trading desk at BP Energy Company ("BPEC"), a major energy and power marketing company, executed non-competitive, prearranged wash sales during his off-exchange trading of electricity (power) contracts. The trades were for the same contract, delivery point, quantity and price, executed opposite the same counterparty company ("counterparty company") and counterparty trader ("counterparty trader"). The trades were prearranged and designed to produce a wash financial result, with neither party making nor taking, nor intending to make or take, delivery or a *bona fide* position in the market or market risk. Biggs and the counterparty trader agreed to execute a buy and a sell on an electronic trading platform ("Trading Platform"), and then to immediately reverse or offset the first trade by bilaterally executing over the telephone an equal and opposite buy and sell, in violation of Section 4c(a)(A) of the Act, which prohibits wash trading. These wash sales caused prices to be recorded on the Trading Platform that were not true and *bona fide*, in violation of Section 4c(a)(B) of the Act, 7 U.S.C. § 6c(a)(B) (1994).³

B. RESPONDENT

Byron G. Biggs, a resident of Fort Worth, Texas, was employed by BPEC from 1999 through 2003 as a power trader. During the April through June 2000 time period, Biggs traded off-exchange electricity products. Biggs has never been registered with the Commission.

C. FACTS

1. The Electronic Trading Platform

Traders at BPEC, the counterparty company, and other market participants trade electricity through direct negotiations with counterparty traders (*i.e.*, bilaterally), through voice-brokers, or through electronic trading facilities. During the April through June 2000 time period, BPEC and the counterparty company executed electricity trades through, among others, the Trading Platform. At all times relevant hereto, the electronic Trading Platform permitted market participants using the Trading Platform to anonymously post bids and offers for various energy contracts in real time.

³ Pursuant to the CFMA, Sections 4c(a)(A) - (B) were amended and recodified as 4c(a)(1) - (2), 7 U.S.C. § 6c(a)(1) - (2) (2001).

2. **Biggs Executed Prearranged Roundtrip Trades, That Resulted In Wash Sales And The Reporting of Non-Bona Fide Prices, Utilizing the Trading Platform.**

On at least six occasions, from at least April through June 2000, Biggs executed non-competitive, prearranged wash sales with a counterparty trader. In each instance, Biggs and the counterparty trader prearranged the wash sales over the telephone. They agreed to execute one buy or sell on the electronic Trading Platform and to execute the opposite buy or sell over the telephone. They agreed that BPEC would purchase or sell an electricity contract, at a particular price and quantity and for a particular delivery point and delivery terms, from the counterparty company by accepting the counterparty company's supposedly anonymous bid or offer on the Trading Platform. They then agreed to immediately execute via the telephone an equal and opposite buy or sell from BPEC back to the counterparty company, at the same price, for the same quantity, for the same delivery point and delivery terms, thus offsetting the initiating trade on the Trading Platform.

D. LEGAL DISCUSSION

Respondent Engaged In Illegal Wash Sales And Caused Non Bona Fide Prices To Be Recorded On The Trading Platform In Violation of the Act.

Under Section 4(c)(a)(A) of the Act, it is unlawful for any person to enter into a transaction involving a commodity that may be used for hedging, determining the price basis of a transaction, or delivering a commodity, in interstate commerce, if the transaction is of the character of a "wash sale." A wash sale is a transaction in which trades are intentionally undertaken for the purpose of giving the appearance that the trades have been executed, without positions being taken in the market or any actual change in the account holder's market position. See, e.g., In re Piasio, et al., [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,276 at 50,686-88 (CFTC Sept. 29, 2000); In re Bear Stearns, et al., [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,665 (CFTC January 25, 1991); In re Three Eight Corporation, et al., [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,749 at 40,444-45 (CFTC June 16, 1993). In Bear Stearns, ¶ 24,994 at 37,663, the Commission explained:

In a wash sale, for example, a trader gives the appearance of making independent decisions to buy and then sell (or sell and then buy) one or more futures contracts. His actual intention at the time he initiates the transaction, however, is to both buy and sell the contract at the same or a similar price – in other words, to create a financial and position nullity

See also, Wilson v. CFTC, 322 F3d 555, 559-60 (8th Cir. 2003) (wash sales "are considered harmful because they create illusory price movements in the market."); In re Piasio, ¶ 28,276 at 50,691 (wash sales are "grave" violations, even in the absence of customer harm or appreciable market effect, because "they undermine confidence in the market mechanism that underlies price discovery.")

Biggs's six prearranged transactions were noncompetitive trades and were engaged in to produce, and did produce, a financial nullity. Thus, the trades constituted illegal wash sales and Biggs violated Section 4c(a)(A) of the Act. Wilson, 322 F3d at 559-60 (8th Cir. 2003); In re Mayer, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,259 at 46,134 (CFTC Feb. 3, 1998).

Section 4c(a)(B) of the Act makes it unlawful to confirm the execution of any commodity 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." The wash sales executed by Biggs caused prices to be recorded on the Trading Platform that were not true and *bona fide*. Accordingly, Biggs violated Section 4c(a)(B) of the Act. In re Gilchrist, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,653 (CFTC Jan. 25, 1991).

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondent violated Section 4c(a)(A) and Section 4c(a)(B) of the Act, 7 U.S.C. § 6c(a)(A) and (B) (1994).

V.

OFFER OF SETTLEMENT

Respondent has submitted an Offer of Settlement in which, without admitting or denying the findings herein, he acknowledges service of the Order; admits jurisdiction of the Commission with respect to the matters set forth in this Order and, for any action or proceeding brought or authorized by the Commission based upon violations of or for enforcement of the Order; waives service and filing of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, any claim of Double Jeopardy based on the institution of this proceeding or the entry of any order imposing a civil monetary penalty or other relief, and all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), as amended by Pub. L. No. 104-21, §§ 231-32, 110 Stat. 862-63 (1996), and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2004), relating to, or arising from, this action; stipulates that the record basis on which this Order is entered consists solely of this Order, including the findings in this Order; and consents to the Commission's issuance of this Order. Pursuant to the Offer of Settlement herein, Biggs agrees to entry of an Order, in which the Commission makes findings, including findings that Biggs violated Sections 4c(a)(A) and (B) of the Act, and orders that Biggs cease and desist from violating Sections 4c(a)(A) and (B) of the Act; Biggs, beginning on the second Monday after the date of the Order accepting this Offer, be prohibited for one year from trading for his own account, for any account in which he has a direct or indirect interest, or for any other account, on any registered entity, as that term is defined in Section 1(a)(29) of the Act, 7 U.S.C. § 1a(29), and all registered entities shall refuse Biggs all privileges for that period; Biggs liquidate all futures and futures options positions held by him or on his behalf, or in which he has any

beneficial interest, before the commencement of the denial of his trading privileges; Biggs pay a civil monetary penalty of Thirty Thousand Dollars (\$30,000); and Biggs comply with the undertakings set forth in this Order.

Upon consideration, the Commission has determined to accept the Offer.

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Biggs shall cease and desist from violating Section 4c(a)(A) and (B) of the Act, 7 U.S.C. § 6c(a)(A) and (B) (1994);
2. Biggs, beginning on the second Monday after the date of the Order accepting this Offer, shall be prohibited for one year from trading for his own account, for any account in which he has a direct or indirect interest, or for any other account, on any registered entity, as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29), and all registered entities shall refuse Biggs trading privileges for that period;
3. Biggs shall liquidate all futures and futures options positions held by him or on his behalf, or in which he has any beneficial interest, before the commencement of the denial of his trading privileges;
4. Biggs shall pay a civil monetary penalty of Thirty Thousand Dollars (\$30,000) within ten (10) days of the date of the Order. Biggs shall cause payment to be made by electronic funds transfer to the account of the Commission at the United States Treasury, or by certified check or bank cashier's check made payable to the Commodity Futures Trading Commission, and addressed to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581 under cover of a letter that identifies Biggs and the name and docket number of this proceeding. Biggs shall simultaneously transmit a copy of the cover letter and of the form of payment to Gregory G. Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581; and
5. Biggs shall comply with the following conditions and undertakings, as specified:

(a) Future Cooperation With the Government

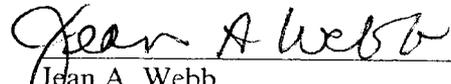
Respondent shall continue to cooperate fully and expeditiously with the Commission, including the Division of Enforcement, in this proceeding, and in any civil investigation, civil litigation, or administrative matter brought by the Commission related to the factual matters discussed herein or related to any activities or conduct by BPEC or its officers, agents, or employees. As part of such cooperation, Biggs agrees to:

- (1) preserve for five years from the date of this Order all records relating to the subject matter of this proceeding or to BPEC's trading and generation operating conduct, including but not limited to audio files, e-mails, and trading records;
- (2) respond promptly, completely, and truthfully to any inquiries or requests for information or documents by the Commission and promptly and completely produce all requested documents;
- (3) provide authentication of documents and other evidentiary material by the Commission;
- (4) meet with Commission attorneys as necessary, regardless of Biggs's residence, at such locations that minimize Commission travel expenditures; the Commission will reimburse travel expenses as required by law;
- (5) when requested by the Commission, testify completely and truthfully in any civil investigation or civil hearing or other proceeding brought by the Commission and either related to the factual matters discussed herein or related to any activities or conduct by BPEC or its officers, agents, or employees; and
- (6) not assert privileges under the Fifth Amendment of the United States Constitution in connection with any testimony he is asked to provide in this proceeding, or any other Commission investigation or proceeding either related to the factual matters discussed herein, or related to any activities or conduct by BPEC or its officers, agents, or employees.

(b) Public Statements

By neither admitting nor denying the findings of fact, Respondent agrees that he shall not take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order or creating, or tending to create, the impression that the Order is without factual or legal basis; provided, however, that nothing in this provision shall affect Biggs's (i) testimonial obligations; or (ii) right to take factual or legal positions in other proceedings to which the Commission is not a party. Biggs will undertake all steps necessary to assure that all of his agents and employees understand and comply with this agreement.

By the Commission.



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

Dated: August 11, 2004