

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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COMMODITY FUTURES TRADING COMMISSION

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<b>In the Matter of</b>	:	CFTC Docket No: <u>05-11</u>
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<b>Armajaro Trading Limited and Warenhandelsgesellschaft Corinth, m.b.H.,</b>	:	<b>ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS</b>
<b>Respondents</b>	:	
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**I.**

The Commodity Futures Trading Commission ("Commission") has reason to believe that Armajaro Trading Limited ("Armajaro") and Warenhandelsgesellschaft Corinth, m.b.H. ("Corinth") have violated Section 4c(a) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6c(a) (2002), and Section 1.38(a) of the Commission's Regulations, 17 C.F.R. § 1.38(a) (2004). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Armajaro and Corinth engaged in the violations 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, Armajaro and Corinth have submitted Offers of Settlement ("Offers"), which the Commission has determined to accept. Armajaro and Corinth acknowledge service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Act, Making Findings and Imposing Remedial Sanctions ("Order"). Armajaro and Corinth, without admitting or denying the findings of fact or conclusions of law herein, consent 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>

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

### III.

The Commission finds the following:

#### A. SUMMARY

On April 1 and 16, 2002, employees of Armajaro and Corinth prearranged two noncompetitive cocoa spread cross trades that were entered and executed on the Coffee, Sugar & Cocoa Exchange ("CSCE"), a subsidiary of the New York Board of Trade. On both occasions, prior to the trades being entered on the CSCE, employees of Armajaro and Corinth had telephone conversations with the broker who caused the orders to be entered pertaining to the specific quantity and price of the trades that were to be executed later in the day.

The prearrangement of the buy and sell spread orders by employees of Armajaro and Corinth ensured that the orders would meet on the trading floor at the specific price and quantity agreed upon prior to the execution of the trades. The prearranged trades by the employees of Armajaro and Corinth negated market risk and price competition and constituted fictitious sales in violation of Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2002). Further, by entering prearranged orders for cocoa spreads, Armajaro's and Corinth's employees also engaged in noncompetitive transactions in violation of Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2004). Because Armajaro's and Corinth's employees undertook their actions within the scope of their employment with Armajaro and Corinth, Armajaro and Corinth are liable for the violations of Section 4c(a) of the Act, 7 U.S.C. § 6c(a) and Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002).

#### B. RESPONDENTS

Armajaro Trading Limited is a limited liability company incorporated under the laws of England and Wales. Armajaro engages in cocoa trading operations in Ghana and the Ivory Coast. Armajaro's business address is 16 Charles Street, London W1J 5DS England. Armajaro has never been registered with the Commission.

Warenhandelgesellschaft Corinth m.b.H is a German trading company. Corinth's business address is Grosse Bleichen 16, D-20354 Hamburg, Germany. Corinth has never been registered with the Commission.

#### C. FACTS

##### April 1, 2002

On April 1, 2002 at approximately 9:48 A.M., employees of Armajaro and Corinth commenced the first of approximately 11 telephone conversations pertaining to their plans to prearrange orders for Corinth selling and Armajaro buying 512 lots of the May/July cocoa spread

that was to be submitted and executed later that day on the CSCE. The participants in that conversation also discussed specific prices sought for the trade.

As a result of the conversations described above, at 10:53 A.M., a broker who participated in some of the telephone conversations placed the buy and sell orders on behalf of Armajaro and Corinth with a floor broker at the CSCE for 512 May/July 2002 cocoa contracts. At 10:54 A.M., a floor broker entered and crossed a prearranged cocoa trade on the CSCE wherein Corinth sold and Armajaro bought 512 May/July 2002 cocoa contracts at 13.<sup>2</sup>

#### **April 16, 2002**

On April 16, 2002 at approximately 8:31 A.M., employees of Armajaro and Corinth commenced the first of approximately 15 telephone conversations pertaining to their plans to prearrange orders for Armajaro selling and Corinth buying 750 lots of the May/July cocoa spread that was to be submitted and executed later that day on the CSCE. The participants of that conversation also discussed specific prices sought for the trade.

As a result of the conversations described above, at 11:18 A.M., a broker who participated in some of the telephone conversations placed the buy and sell orders on behalf of Armajaro and Corinth with a floor broker at the CSCE for 750 May/July 2002 cocoa contracts. At 11:19 A.M., a floor broker entered and crossed a prearranged cocoa trade on the CSCE wherein Armajaro sold and Corinth bought 750 May/July cocoa contracts at a price of 34.<sup>3</sup>

### **D. LEGAL DISCUSSION**

#### **1. Armajaro and Corinth Entered into Fictitious Sales in Violation of Section 4c(a) of the Act**

Section 4c(a) of the Act makes it unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction that is a fictitious sale. *In re Gimbel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,213 at 35,003 (CFTC Apr. 14, 1988), *aff'd as to liability*, 872 F.2d 196 (7<sup>th</sup> Cir. 1989). 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(a) broadly prohibits artificial trades intended to avoid the risks and price competition of the open market.

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<sup>2</sup> The May 2002 prices for the spread transactions are stated in terms of the difference in price between the futures contracts. In this case, the May leg of the spread was 1487 and the July leg was 1500. Therefore, the difference is 13.

<sup>3</sup> The May 2002 prices for the spread transactions are stated in terms of the difference in price between the futures contracts. In this case, the May leg of the spread was 1520 and the July leg was 1486. Therefore, the difference is 34.

Although Section 4c(a) of the Act prohibits fictitious sales, the term is not defined in the Act. *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). A fictitious sale is a general category that includes, at a minimum, the unlawful practices specifically enumerated in Section 4c(a), as well as prearranged trading. *Id.*; *In re Gimbel*, ¶ 24,213 at 35,003. 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. *In re Fisher*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,725 at 56,052 n.11 (CFTC Mar. 24, 2004); *Thomas Collins*, ¶ 27,194 at 45,742; *Harold Collins*, ¶ 22,982 at 31,902.

The Commission has long held that prearranged trading is a form of fictitious sales. *Harold Collins*, ¶ 22,982 at 31,903. By determining trade information such as price and quantity outside the pit, then using the market mechanism to shield the private nature of the bargain from public scrutiny, both price competition and market risk are eliminated. *Id.*

In this case, the various telephone conversations between the employees and agents of Armajaro and Corinth pertaining to the specific quantity and price of the contracts to be traded prior to the submission of the orders and the execution of the trades established that the resulting trades were prearranged, and thus fictitious sales. Consequently, by entering orders for prearranged trades, the employees and agents of Armajaro and Corinth violated Section 4c(a)(1), which makes it unlawful to offer to enter into, or to enter into, any commodity futures transaction that is a fictitious sale. Moreover, pursuant to Section 2(a)(1)(B) of the Act, Armajaro and Corinth are liable for these violations.

### **3. Armajaro and Corinth Executed Noncompetitive Trades in Violation of Commission Regulation 1.38(a)**

Commission Regulation 1.38(a) requires that all purchases and sales of commodity futures be executed “openly and competitively.” The purpose of this requirement is to ensure that all trades are executed at competitive prices and that all trades are directed into a centralized marketplace to participate in the competitive determination of the price of futures contracts. Noncompetitive trades are generally transacted in accordance with express or implied agreements or understandings between and among the traders. *Gilchrist*, ¶ 24,993 at 37,652. Noncompetitive trades are also a type of fictitious sales because they negate the risk incidental to an open and competitive market. *Fisher*, ¶ 29,725 at 56,052 n. 11. Trades can be noncompetitive even though they were executed in the pit. *In re Buckwalter*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,683 (CFTC Jan. 25, 1991) (citing *Laiken v. Dep't of Agriculture*, 345 F.2d 784, 785 (2d Cir. 1965)). Prearranged trading is a form of anti-competitive trading that violates Commission Regulation 1.38(a). *Gimbel*, ¶ 24,213 at 35,003.

By knowingly structuring and entering into two prearranged noncompetitive trades, employees of Armajaro and Corinth violated Commission Regulation 1.38(a). Accordingly, pursuant to Section 2(a)(1)(B) of the Act, Armajaro and Corinth are liable for these violations.

#### IV.

#### **OFFER OF SETTLEMENT**

Armajaro and Corinth have submitted Offers in which each, without admitting or denying the findings herein: (1) acknowledges service of the Complaint and the Order; (2) admits the jurisdiction of the Commission with respect to the matters set forth herein; (3) waives 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, all claims which it possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2004), relating to, or arising from this action, and any claim of Double Jeopardy based upon institution of this proceeding or the entry of any order imposing a civil monetary penalty or any other relief; (4) stipulates that the record basis on which the Order may be entered shall consist solely of the Complaint, Order and findings in the Order consented to in the Offer; and (5) consents to the Commission's issuance of the Order, which makes findings as set forth below and: (a) orders Armajaro and Corinth to cease and desist from violating the provisions of the Act and Regulations that they have been found to have violated; (b) imposes a civil monetary penalty upon Armajaro of \$35,000 and upon Corinth of \$25,000; and (c) orders Armajaro and Corinth to comply with the undertakings consented to in its Offer.

#### V.

#### **FINDINGS OF VIOLATIONS**

Solely on the basis of the consents evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Armajaro and Corinth violated Section 4c(a) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6c(a), and Section 1.38(a) of the Commission's Regulations, 17 C.F.R. § 1.38(a).

#### VI.

#### **ORDER**

Accordingly, it is hereby ordered that:

1. Armajaro and Corinth cease and desist from violating Section 4c(a) of the Act and Section 1.38(a) of the Regulations;
2. Armajaro pay a civil monetary penalty in the amount of thirty-five thousand dollars (\$35,000) and Corinth pay a civil monetary penalty in the amount of twenty-five thousand dollars (\$25,000) due within ten (10) days of the date of the Order; payment is to be made by electronic funds transfer, U.S. postal money

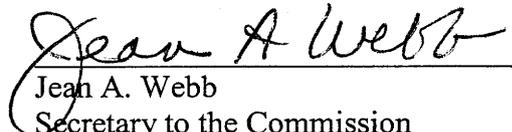
order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Armajaro or Corinth individually as the payee and the name and docket of this proceeding. Armajaro and Corinth shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if Armajaro or Corinth fails to pay the full amount within fifteen (15) days of the due date, it shall be automatically prohibited from the privileges of all registered entities until it shows to the satisfaction of the Commission that payment of the full amount with interest thereon to the date of payment has been made;

3. Armajaro and Corinth acknowledge that failure to comply with the Order shall constitute a violation of the Order and may subject it to administrative or injunctive proceedings, pursuant to the Act; and
4. Armajaro and Corinth are directed to comply with their undertakings:
  - a. neither Armajaro or Corinth nor any of their agents or employees under their authority and control shall 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 a factual basis; provided, however, that nothing in this provision affects their: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Armajaro and Corinth shall take all steps necessary to ensure that their respective agents or employees, if any, understand and comply with this undertaking.
  - b. Armajaro and Corinth shall cooperate with staff of the Commission in the continuing litigation of this matter concerning the remaining respondent. As part of such cooperation, Armajaro and Corinth agree, 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 Armajaro or Corinth's possession, custody, or control, including inspection and copying of documents; (3) requests for agents and employees of Armajaro and Corinth 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 Armajaro or Corinth 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 Armajaro or Corinth.

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

By the Commission

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

Dated: June 21, 2005