

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of	:	
	:	
WAYNE I. ELLIOTT, FRANCIS	:	CFTC Docket No. 95-1
MARITOTE, J. BRIAN SCHAER, and	:	
JOHNATHAN A. SION	:	ORDER
	:	

Johnathan A. Sion petitions for a reduction in two elements of the sanctions imposed on him in February 1998.¹ He characterizes those sanctions as “clearly excessive” and emphasizes that he has a good reputation as a trader, did not intend to violate any legal requirements, and has not been the subject of a recent disciplinary action. The Division of Enforcement (“Division”) argues that Sion’s petition does not make the type of showing necessary to warrant post-judgment relief.

Prior to assessing Sion’s sanctions in February 1998, the Commission fully considered the record evidence regarding Sion’s reputation as a trader and intent in participating in the 32 non-competitive transactions at issue in this case. The record on these issues has not changed since that time. Consequently Sion’s arguments relating to these factors could have been raised in his answering brief on appeal or in a timely

¹ We imposed a cease and desist order, six month trading prohibition and \$50,000 civil money penalty in light of our conclusion that Sion had joined with his co-respondents in violations of Section 4c(a) of the Commodity Exchange Act (“Act”) and Commission Rule 1.38. *In re Elliott*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,243 at 46,008 (CFTC Feb. 3, 1998) *aff’d sub nom. Elliot v. CFTC*, 202 F.3d 926 (7th Cir. 2000) *cert. denied*, No. 0-259, 2000 WL 12101653 (“*Elliott*”). Sion concedes that the cease and desist order is appropriate. We recently denied Sion’s motion for a stay of the sanctions’ effective date pending consideration of his motion. *In re Elliott*, CFTC Docket No. 95-1 (CFTC Dec. 22, 2000).

petition for reconsideration of the Commission's February 1998 decision.² He offers no excuse for waiting until after the judicial review process was completed to raise these issues. Consequently, to the degree Sion's petition relies on arguments relating to his reputation as a trader or intent in violating the Act, we deny it as an untimely petition for reconsideration.³

A change in circumstances may affect the propriety of continuing a forward-looking sanction such as a trading prohibition. *In re ADM Investor Services, Inc.*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,236 (CFTC Sept. 13, 2000) ("ADM"). In weighing the significance of such a change, the Commission generally looks to whether the record shows that it is no longer equitable that a particular forward-looking sanction have prospective application. *Id.* at 50,461. In the context of a trading prohibition, we specifically focus on whether the change in circumstances amounts to a reliable showing that petitioner's trading no longer poses a substantial risk to market integrity. *In re Rouso*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,242 at 50,491 (CFTC Sept. 13, 2000)

Sion claims that during the three years that have passed since our February 1998 decision, he has not been involved in any disciplinary proceedings. Even if this change

²Under Commission Rule 10.106, Sion was required to file a petition for reconsideration within 15 days of the date that decision was served.

³ In discussing these factors, Sion relies on statements in (1) the decision of the Administrative Law Judge who ruled in his favor; (2) an *amicus* brief submitted by the Chicago Board of Trade; and (3) the Seventh Circuit decision affirming both the Commission's substantive and sanctions analysis. At best, these statements indicate that reasonable minds could differ about the proper assessment of the record. They do not undermine our prior conclusion that Sion was a knowing participant in respondents' non-competitive trading.

in circumstances were established reliably,⁴ it would not be sufficient to show that his trading no longer poses a substantial risk to market integrity. During the period at issue, Sion was appealing our February 1998 decision and thus had a unique incentive for good conduct. *Compare In re Ryan*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,049 at 44,983 (CFTC April 25, 1997).

Accordingly, we deny Sion's motion to reduce his sanctions.

IT IS SO ORDERED.

By the Commission (Acting Chairman NEWSOME and Commissioners HOLUM, SPEARS, and ERICKSON).

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

Dated: March 22, 2001

⁴ Sion did not submit an affidavit in support of his factual claims.