

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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11:12 am, Aug 15, 2017

In the Matter of:

Copersucar Trading A.V.V.

Respondent.

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) **CFTC Docket No. 17-22**
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 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 from in or about April 2013 to at least September 2014 (the “Relevant Period”) the respondent, Copersucar Trading A.V.V. (“Copersucar” or “Respondent”), violated Section 4c(a)(1) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6c(a)(1) (2012), and Commission Regulation (“Regulation”) 1.38(a), 17 C.F.R. § 1.38(a) (2017). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent 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 an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry 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”) and acknowledges service of this Order.¹

¹ Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent consent to the use of the Offer or this Order, or the

III.

The Commission finds the following:

A. SUMMARY

On multiple occasions between April 2013 and September 2014, Respondent engaged in wash trades in Sugar No. 11 futures Trade at Settlement (“TAS”) contracts, traded on ICE Futures U.S., Inc. (“ICE” or the “Exchange”), a designated contract market, in violation of Section 4c(a) of the Act, 7 U.S.C. § 6c(a). Authorized agents of Copersucar, who are responsible for Copersucar’s trading operations, entered equal and opposite orders in the same futures product for separate accounts that were owned by Copersucar, and matched the product, quantity, and price of those orders when they were entered on the Exchange, often within seconds of each other. By so structuring or prearranging and entering these orders, which negated the risk incidental to an open and competitive marketplace, Respondent also engaged in noncompetitive transactions in violation of Regulation 1.38(a), 17 C.F.R. § 1.38(a).

B. RESPONDENTS

Respondent **Copersucar** is an Aruban corporation with a principal office located at Watapanastraat 7, Ponton, Oranjestad, Aruba, that, among other things, trades in global futures markets in connection with Copersucar’s import and export business in sugar and ethanol. Copersucar is a subsidiary of Copersucar S.A., the world’s largest sugar and ethanol company, based in São Paulo, Brazil. Copersucar is not registered with the Commission in any capacity.

C. FACTS

On multiple occasions between April 2013 and September 2014, Respondent prearranged and executed equal and opposite, offsetting trades in the ICE Sugar No. 11 futures TAS contracts in order to transfer futures positions between various accounts owned by Copersucar. Respondent’s agents entered the orders for these trades electronically and timed the order entry to be as close to simultaneously as possible—entering numerous orders less than ten seconds apart.

Copersucar held separate trading accounts at different brokers as a means to distinguish between its various trading strategies, including the hedging of physical trading conducted by separate business units. Respondent maintains that, toward the end of each trading month, it sought to consolidate the positions in Copersucar’s accounts into one Copersucar account to better manage Copersucar’s delivery obligations and risk. Typically, Copersucar’s agents executed such transfers pursuant to the policies of the clearing broker and the rules of the designated contract market. However, in some instances, and in particular near or after the notice date, Copersucar’s clearing broker would not make the back office transfers due to applicable contract market rules. In these situations, Copersucar’s agents would enter equal and opposite transactions in a riskless fashion to accomplish what they deemed Copersucar’s “book squaring” needs.

In or about October 2014, Respondent undertook several changes to its business operations which ultimately led a reduction in the need to transfer positions at or around the end of each trading month. Following the initiation of the Division of Enforcement’s investigation into their

trading conduct, Respondent represented that it instituted a number of changes in its policies and procedures in order to prevent future violations including additional guidance regarding the wash trade prohibition and applicable contract market rules, use of self-trade prevention technology, and training for its agents. Respondent has cooperated fully during this investigation.

IV.

LEGAL DISCUSSION

1. **Respondent Entered into Wash Sales in Violation of Section 4c(a)(1) 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, is of the character of, or is commonly known to the trade as, a ‘wash sale.’” 7 U.S.C. §6c(a)(1), (2). A wash sale is a form of 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 sub nom. Gimbel v. CFTC*, 872 F.2d 196 (7th Cir. 1989).

In order to establish that a wash sale has occurred, it must initially be demonstrated that the transaction at issue achieved a wash result. The Commission may demonstrate that the trades resulted in a wash by showing “(1) the purchase and sale (2) of the same delivery month of the same futures contract (3) at the same (or a similar) price.” *Wilson v. CFTC*, 322 F.3d 555, 559 (8th Cir. 2003) (citing *In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993, at 37,653 (CFTC Jan. 25, 1991)); *see also In re Cargill de México S.A. De C.V.*, CFTC No. 15-34, 2015 WL 5658083, at *2-3 (Sept. 24, 2015); *In re Citadel Trading*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep (CCH) ¶ 23,082, at 32,190 (May 12, 1986) (“Orders to purchase and sell for the account of the same customer the identical quantity of the same futures contract at identical prices were entered virtually simultaneously.”)

In addition to the factors enumerated in *Gilchrist*, intent must be proven to establish a violation of Section 4c of the Act. *See, e.g., Reddy v. CFTC*, 191 F.3d 109, 119 (2d Cir. 1999). The intent to negate risk or price competition and avoid a bona fide market position can properly be inferred from prearrangement but it can also be inferred “from the intentional structuring of a transaction in a manner to achieve the same result as prearrangement.” *In re Three Eight Corp.*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,749, at 40,444 n.15 (CFTC Jun.16, 1993) (citing *In re Collins* [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,982, at 31,900-01 (CFTC Apr. 4, 1986), *rev’d on other grounds sub nom. Stoller v. CFTC*, 834 F.2d 262 (2d Cir. 1987)). The placement of offsetting orders to buy and sell, while simultaneously taking steps to “enhance the likelihood that the buy and sell orders would be filled at the same or a similar price” is persuasive evidence that the trader intends to negate risk and price competition. *Collins*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 31,900; *see also In re Piasio*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,276, at 50,685, 50,689-91 (CFTC Sept. 29, 2000) (finding customer who placed paired buy and sell orders, with specific pricing and loss limitation instructions, “structured orders to negate risk” and thus had intent to violate Section 4c), *aff’d sub nom. Piasio v. CFTC*, 54 Fed. App’x 702 (2d Cir. 2002).

Respondent entered into trades for the purchase and sale of the same delivery month of the same futures contract at the same prices, and thus achieved wash results. Additionally, Respondent

knowingly entered into the purchase and sale of the same delivery month of the same futures contracts at the same (or a similar) price for the purpose of transferring positions between its accounts. In doing so, Respondent violated Section 4c(a)(1) of the Act, 7 U.S.C. § 6c(a)(1), by entering into transactions of the character of and commonly known as wash sales.

2. Respondent Executed Noncompetitive Trades in Violation of Commission Regulation 1.38(a)

Regulation 1.38(a) requires that all purchases and sales of commodity futures be executed “openly and competitively.” 17 C.F.R. § 1.38(a). 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. *See, e.g., In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 37,652. Noncompetitive trades are also a type of fictitious sale because they negate the risk incidental to an open and competitive market. *In re Fisher*, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,725, at 56,052 n.11 (CFTC Mar. 24, 2004). Prearranged trading is a form of anti-competitive trading that violates Regulation 1.38(a). *See, e.g., In re Shell US Trading Co.*, [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,161, at 57,632 (CFTC Jan. 4, 2006); *In re Gimbel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) at 35,003.

By knowingly structuring and entering into prearranged noncompetitive trades, Respondent violated Regulation 1.38(a), 17 C.F.R. § 1.38(a).

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 4c(a)(1) of the Act, 7 U.S.C. § 6c(a)(1), and Regulation 1.38(a), 17 C.F.R. § 1.38(a).

VI.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:

1. The filing and service of a complaint and notice of hearing;
 2. A hearing;
 3. All post-hearing procedures;
 4. Judicial review by any court;
 5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148, relating to, or arising from, this proceeding;
 7. Any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (codified as amended in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondent violated Section 4c(a)(1) of the Act, 7 U.S.C § 6a(a)(1), and Regulation 1.38(a), 17 C.F.R. § 1.38(a);
 2. Orders Respondent to cease and desist from violating Section 4c(a)(1) of the Act and Regulation 1.38(a);
 3. Orders Respondent to pay a civil monetary penalty in the amount of \$300,000, plus post-judgment interest if the civil monetary penalty is not paid in full within ten (10) days of the entry of this Order; and
 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings as set forth in Section VII of this Order.

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

VII.
ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent and its successors and assigns shall cease and desist from violating Section 4c(a)(1) of the Act, 7 U.S.C. § 6c(a)(1), and Regulation 1.38(a), 17 C.F.R. § 1.38(a).
- B. Respondent shall pay a civil monetary penalty in the amount of three hundred thousand dollars (\$300,000) (“CMP Obligation”), plus post-judgment interest, within ten (10) days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables
DOT/FAA/MMAC/AMZ-341
CFTC/CPSC/SEC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-7262 office
(405) 954-1620 fax
nikki.gibson@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
 - 1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this

Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.

2. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.
3. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Consent Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

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

By the Commission.



Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: August 15, 2017