

Received
C.F.T.C.

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

2011 MAY -2 AM 10: 55

Office of
Proceedings
Proceedings Clerk

In the Matter of

Thorbjorn Haveman

Respondent.

)
) CFTC Docket No: 11-12
)
) **ORDER INSTITUTING PROCEEDINGS**
) **PURSUANT TO SECTIONS 6(c) AND 6(d)**
) **OF THE COMMODITY EXCHANGE**
) **ACT, AS AMENDED, MAKING**
) **FINDINGS AND IMPOSING REMEDIAL**
) **SANCTIONS**
)

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Thorbjorn Haveman (“Haveman” or “Respondent”) has violated Sections 4b(a)(1)(A) and (C) and 4c(a) of the Commodity Exchange Act (the “Act”), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, Title XIII (the CFTC Reauthorization Act of 2008 (“CRA”)), §§ 13101-13204, 122 Stat. 1651 (enacted June 18, 2008), to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C) and 6c(a) and Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2010). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Haveman 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, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying the findings of fact herein, Respondent consents to the entry of and acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, As Amended, Making Findings and Imposing Remedial Sanctions (“Order”).¹

¹ 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. Respondent does not consent to the use of the Offer or the findings in 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 this Order. Nor does Respondent consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any party in any other proceeding.

III.

A. SUMMARY

From September 2008 to February 2010 (“relevant period”), Haveman, a registered floor broker at the Chicago Mercantile Exchange (“CME”), recorded 458 round turn trades in the S&P 500 futures contract that were not executed in the trading pit between his account and the accounts of three local traders (“locals”) who employed him as a clerk. The local traders had not authorized Haveman to make the trades on their behalf. Haveman executed the unauthorized, fictitious, and noncompetitive trades to move money from the locals’ accounts to his trading account, causing the locals to suffer approximately \$218,425 in losses.

Haveman’s trading violated Section 4c(a) of the Act, which prohibits fictitious trading, Sections 4b(a)(1)(A) and (C) of the Act, which prohibit any person from committing fraud in connection with commodity futures contracts, and Commission Regulation 1.38(a), which prohibits noncompetitive trading of commodity futures contracts.

B. RESPONDENT

Haveman resides in Elmhurst, Illinois. He was registered as a floor broker from September 2008 to April 2010, when the CME terminated his floor broker registration. Haveman is currently not registered with the Commission in any capacity.

C. FACTS

From September 2008 to February 2010, in addition to trading for his own account, Haveman’s job duties as a clerk for the three local traders included checking their trades for quantity, opposite trader, or other errors, having the locals’ trading cards time stamped and submitting the trading cards for clearing. In order to do so, Haveman obtained the locals’ trading cards every 15 minutes during the trading day after a bracket period expired. Trading cards consist of the hard back trading card and a duplicate copy (“dupe”) attached to the hard back card. The dupe can be torn off by the locals or their clerks as a copy of the locals’ executed trades, while the hard back card is submitted to a futures commission merchant’s back office for clearing.

In this case, after obtaining the locals’ trading cards, Haveman tore off the original dupe from the trading cards, placed an unused dupe on top of the locals’ trading cards to record the fictitious trades, and then recorded the fictitious trades on his own trading cards. Haveman then time stamped his trading cards and the locals’ trading cards and submitted them for back office clearing. Haveman either kept or discarded the second dupe once he had recorded the fictitious trades. By using the second dupe to record the fictitious trades, Haveman could hide the trades from the locals because if the locals reviewed their original dupes, the trades would not appear.

Haveman executed 458 round turn S&P 500 futures trades in this manner. Each time, the trades were profitable to him, with a corresponding loss to the locals. Haveman profited by \$218,425, with corresponding losses to the three locals.

Haveman's trading records show that from September 2008 to February 2010, he traded 1,376 contracts in the 458 round turn transactions opposite the three locals, which was an unusually large volume of trades given their previous trading patterns. Further, videotapes of at least thirteen instances when Haveman's suspect trades were supposed to have occurred reveal that in each instance, Haveman was either not present in the S&P 500 pit, or did not have interaction with the three locals consistent with open and competitive trading at the time of the alleged trades. Finally, in audiotape CME interviews, Haveman admitted that he falsified trading cards in order to execute the fictitious trades without the locals' knowledge and misappropriated their funds. Haveman cited personal financial issues and reduced business in the pit as some of the reasons for his conduct and stated that he used the misappropriated funds to pay his mortgage and other personal expenses. On October 18, 2010, the CME issued an Order finding that Haveman engaged in fraud and bad faith, created or reported a false or fictitious trade, and committed an act which is detrimental to the CME's interest or welfare. The CME specifically found that Haveman created fictitious trades for the purpose of moving money into his personal trading account from the accounts of several other traders for whom Haveman acted as a clerk.

D. LEGAL DISCUSSION

1. Haveman's Fictitious Sales Violated 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. Although Section 4c(a) of the Act prohibits fictitious sales, the term is not defined in the Act. *See 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*, [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 (7th Cir. 1989); *In re Shell Trading US Co.*, [2005-2007 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,161 (CFTC Jan. 4, 2006). 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. *See In re Fisher*, [2003-2004 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. By determining trade information such as price and quantity outside the pit, and then using the market mechanism to shield the private nature of the trade from public scrutiny, both price competition and market risk are eliminated. *See Harold Collins*, ¶ 22,982 at 31,903.

By enacting Section 4c(a), Congress sought to ensure that all trades are focused in the centralized market place to participate in the competitive determination of the price of the futures contract. *See S. REP. NO. 93-1131*, 93d Cong., 2d Sess. 16-17 (1974); *see also Merrill Lynch Futures, Inc., v. Kelley*, 585 F. Supp. 1245, 1251 n.3 (S.D.N.Y. 1984) (Section 4c(a) was generally intended to prevent collusive trades conducted away from the pits). As a result,

Section 4c(a) broadly prohibits fictitious trades intended to avoid the risks and price competition of the open market.

Here, Haveman engaged in an eighteen month scheme wherein he prearranged the price and quantity of 458 round turn trades outside of the futures pit, falsified trading cards containing the prearranged trading information, and failed to submit the trades to the futures pit for open and competitive execution. By these actions, Haveman engaged in fictitious sales, in violation of Section 4c(a) of the Act.

2. Haveman Engaged in Unauthorized Trading and Misappropriation In Violation of Section 4b(a) of the Act

Sections 4b(a)(1)(A) and (C) of the Act prohibit any person from cheating or defrauding or attempting to cheat or defraud, and willfully deceiving or attempting to deceive any other person by any means whatsoever in or in connection with any order to make or the making of any futures contract for or on behalf of such person. Haveman violated Sections 4b(a)(1)(A) and (C) of the Act by willfully engaging in unauthorized trading and misappropriating funds of the three locals who employed him.

a. Unauthorized Trading

Unauthorized trading falls within the Act's anti-fraud prohibition when trades are executed without the account owner's permission or contrary to the account owner's trading instructions. *See In re Interstate Securities Corp.*, [1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,295 at 38,955 (CFTC June 1, 1992) (citing *Cange v. Stotler, Inc.*, 826 F.2d 581, 589-590 (7th Cir. 1987); *Haltmier v. CFTC*, 554 F.2d 556, 560-562 (2d Cir. 1977)). Here, Haveman entered hundreds of trades onto the locals' trading cards and submitted the cards for clearing without the locals' authorization. By these actions, Haveman engaged in unauthorized trading in violation of Sections 4b(a)(1)(A) and (C) of the Act.

b. Misappropriation

Misappropriating others' funds constitutes "willful and blatant" fraudulent activity that violates the anti-fraud provisions of the Act. *CFTC v. Noble Wealth Data Info. Services, Inc.*, 90 F. Supp. 2d 676, 687 (D. Md. 2000) (citations omitted), *aff'd in part, rev'd in part sub nom.*, *CFTC v. Baragosh*, 278 F.3d 319 (4th Cir. 2002). Haveman misappropriated the three locals' funds by recording trades opposite their accounts, which had the effect of moving \$218,425 from the locals' accounts to his trading account. *Cf. Noble Wealth Data Info Services Inc.*, 278 F. Supp. 2d at 686-687 (misappropriation of traders' and customers' funds by a sham futures exchange). In this regard, the very purpose of Haveman's fictitious trading scheme was to enable him to misappropriate funds from the locals' accounts for whom he was working as a clerk. Haveman subsequently used the funds to pay his mortgage and other personal expenses. Accordingly, Haveman engaged in misappropriation in violation of Sections 4b(a)(1)(A) and (C) of the Act.

c. Scienter

In order to establish that a respondent violated Section 4b(a) of the Act, the Commission must demonstrate that the respondent acted with scienter. *See Hammond v. Smith Barney Harris Upham & Co.*, [1997-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,654 (CFTC Mar. 1, 1990) (scienter is required to establish a violation of Section 4b). Scienter refers to a mental state embracing an intent to deceive, manipulate, or defraud. *See CFTC v. Rosenberg*, 85 F. Supp. 2d 424, 438 (D.N.J. 2000) (citations omitted). Scienter may also be established by recklessness. *See In re Slusser*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27, 701 at 48,313 (CFTC July 19, 1999), *aff'd in relevant part and rev'd in part sub nom.*, *Slusser v. CFTC*, 210 F.3d 783 (7th Cir. 2000); *see also CFTC v. Equity Fin. Group, LLC*, 572 F.3d 150, 159 (3rd Cir. 2009) (scienter may be shown by conscious behavior or recklessness) (citations omitted). Scienter is established here because Haveman knowingly and intentionally engaged in 458 fictitious trades over an eighteen month period in order to obtain and misappropriate the three locals' funds.

3. Haveman Engaged in Noncompetitive Trading In Violation of Commission Regulation 1.38(a)

Commission Regulation 1.38(a) requires that all trades “be executed openly and competitively by open outcry” The purpose of this requirement is to ensure that all trades are directed into a centralized marketplace to participate in the competitive determination of the price of futures contracts. Any trader that does not execute futures trades by open outcry violates this Regulation. By recording 458 round turn S&P 500 futures trades that were not executed in the trading pit during trading hours, Haveman violated Regulation 1.38(a).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Haveman violated Sections 4b(a)(1)(A) and (C) and 4c(a) of the Act, and Commission Regulation 1.38(a).

V. OFFER OF SETTLEMENT

Haveman has submitted an Offer in which, without admitting or denying the findings herein, he:

- (A) Acknowledges receipt of service of this Order;
- (B) Admits the jurisdiction of the Commission with respect to all the matters set forth in 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 consideration of the Offer; (6) any and all claims that he may possess under the Equal Access to Justice

Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or Part 148 of the Commission's Regulations ("Regulations"), 17 C.F.R. §§ 148.1 *et seq.* (2010), relating to, or arising from, this proceeding; (7) any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and (8) 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;

(D) Stipulates that the record upon which this Order is entered shall consist solely of the findings in this Order to which he has consented;

(E) Consents, solely on the basis of the Offer, to the entry of this Order that:

- (1) makes findings by the Commission that he violated Sections 4b(a)(1)(A) and (C) and 4c(a) of the Act, as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), and 6c(a), and Commission Regulation 1.38(a) (2010);
- (2) orders him to cease and desist from violating Sections 4b(a)(1)(A) and (C) and 4c(a) of Act, as amended by the CRA and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, Title VII (the Wall Street Transparency and Accountability Act of 2010 ("Dodd-Frank Act")), §§ 701-774, 124 Stat. 1376 (enacted July 21, 2010), to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), and 6c(a), and Commission Regulation 1.38(a) (2010);
- (3) orders that, beginning on the third Monday after the date of entry of this Order, he be permanently prohibited from engaging, directly or indirectly, in trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a), and all registered entities shall refuse him trading privileges;
- (4) orders him to pay a civil monetary penalty in the amount of \$140,000, plus post-judgment interest, within ten (10) days of the date of the entry of this Order; and
- (5) orders that he comply with the undertakings consented to in his Offer and set forth below in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.²

² The CME previously brought an action against Haveman arising out of these facts. The CFTC is not seeking restitution in light of the CME order requiring Haveman to pay full restitution of \$218,425.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

(1) Haveman shall cease and desist from violating Sections 4b(a)(1)(A) and (C), and 4c(a) of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. §§ 6b(a)(1)(A) and (C), and 6c(a), and Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2010);

(2) Haveman, beginning on the third Monday after the date of entry of this Order, is permanently prohibited from trading on or subject to the rules of any registered entity (as that term is defined in Section 1a of the Act, as amended by the CRA and the Dodd-Frank Act, to be codified at 7 U.S.C. § 1a), and all registered entities shall refuse him trading privileges;

(3) Respondent shall pay a civil monetary penalty in the amount of \$140,000, plus post-judgment interest, within ten (10) business days of the date of entry of the Order. Post-judgment interest shall accrue on Respondent's civil monetary penalty beginning eleven (11) business days after the date of entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of the Order pursuant to 28 U.S.C. § 1961. Respondent shall pay his civil monetary penalty by making an electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made by other than an electronic funds transfer, 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
Attention: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-6569

If payment by electronic transfer is chosen, Respondent shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the penalty 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: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address.

- (4) Haveman shall comply with the following undertakings:
- (a) before the third Monday after the date of entry of this Order, he shall liquidate all futures and options positions held by him or on his behalf, or in which he has a beneficial interest;
 - (b) he shall never apply for registration or claim exemption from registration with the Commission in any capacity, and he shall never engage in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010);
 - (c) he shall not act as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2010)), agent or any other officer or employee of any person (as that term is defined in Section 1a(28) of the Act, 7 U.S.C. § 1a(28) (2006)) registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2010); and
 - (d) Neither he nor any of his agents or employees under his 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 his (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. He shall undertake all steps necessary to ensure that all of his agents and employees under his authority or control understand and comply with this agreement.

By the Commission.



David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: May 2, 2011