

III.

The Commission finds the following:

A. SUMMARY

During the relevant period SMP was on both sides of three trades in the March 2012 Japanese Yen options contract listed on the Chicago Mercantile Exchange, Inc. ("CME"), while SMP and Epaster, an entity owned and controlled by two SMP employees, were on opposite sides of two trades in the March 2012 Japanese Yen options contract. SMP's five round-turn transactions opposite Epaster and itself were equal and offsetting in size and price, and were initiated at or near the same time. Additionally, the same SMP employees controlled SMP's and Epaster's trading accounts, including the SMP and Epaster accounts that traded opposite each other, so each knew that the other was the counterparty to the trades. Further, SMP, by and through its employees, intentionally negated price competition in the five round-turn trades it executed opposite itself and opposite Epaster because the trades were entered and executed in an illiquid market at prices higher than any other bids and offers in the market at the time. SMP's employees knew that the transactions opposite itself and opposite Epaster were riskless and that the three transactions opposite itself resulted in a financial nullity. SMP therefore also knew that the three transactions opposite itself achieved a wash result.

B. RESPONDENT(S)

SMP Bank is headquartered in Moscow, Russia and offers banking services to corporate and private clients. It was established in Moscow in 2001 and has more than 100 branches throughout 27 regions of Russia. SMP maintains trading accounts at three United States ("US") futures commission merchants ("FCMs") registered with the CFTC. SMP has never been registered with the Commission in any capacity.

Epaster Investments, Ltd. is an investment company located in Nicosia, Cyprus formed by two SMP employees approximately four or five years ago for the purpose of investing the two partners' funds. Epaster maintains a futures account with a US registered FCM and three SMP employees are the authorized traders on the account. Epaster has never been registered with the Commission in any capacity.

proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

C. FACTS

1. The Marketplace and Japanese Yen

Traders may buy and sell Japanese yen futures and options contracts during stated trading hours either in open outcry trading sessions in a physical trading pit located on the trading floor at the CME or on Globex, the CME's electronic trading platform, which traders may access worldwide through a range of connectivity options. The Globex platform is an open access marketplace that allows customers to participate directly in the trading process, view the book of orders and prices for Japanese yen futures and options and enter their own orders. Globex employs predefined sets of matching rules to execute trades. A trade on Globex occurs when a seller enters an offer at a limit price equal to or lower than the best available (*i.e.*, highest) bid on the book, or when a buyer enters a bid at a limit price equal to or higher than the best available (*i.e.*, lowest) ask on the book. To ensure a fair, stable and orderly market, Globex subjects all orders to price verification using a process called price banding. The Globex platform uses one mechanism for futures price banding and another for options price banding. Without price banding, for example, a clearly erroneous order, such as a limit bid at a price well above the market or a limit offer at prices well below the market, could trigger a sequence of market-moving trades that require subsequent price adjustments.

During the relevant time, the market for trading Japanese yen futures and options contracts took place on the trading floor pit from 7:20:00 to 14:00:00 CST during business days, and overnight and through the next trading day on Globex from 17:00:00 to 16:00:00 CST. A Japanese yen futures contract consists of 12,500,000 Japanese yen. The CME lists Japanese yen futures contracts for six months in the March quarterly cycle (March, June, September and December). The contract trades in minimum price increments (or "ticks") of \$0.000001 per Japanese yen increments, equivalent to \$12.50 per futures contract per tick. The CME also lists options on Japanese yen futures contracts in the March quarterly cycle. The trading unit of Japanese yen options for an option to buy, in the case of the call, or to sell, in the case of the put, is one Japanese yen futures contract. Options on Japanese yen futures contracts trade in the same minimum price increments as Japanese yen futures. During the relevant time, the nearby Japanese yen futures contract was the June 2011 contract. The March 2012 Japanese yen contract was the fourth deferred contract. Trading in the March 2012 Japanese yen contract was illiquid.

At the end of each trading day, CME staff determines a "settlement price" for all Japanese yen futures and options deferred contract months at a price based on traded or quoted spread relationships, if available. If these traded/quoted spread relationships are not available, then deferred contract months are settled using spot market information, taking into account the forward rate.

2. The Subject Trades

a. SMP's and Epaster's Fictitious and Prearranged Trading

On April 15, 2011, SMP traded the March 2012 Japanese Yen options contract on the CME opposite an Epaster account in which SMP was the seller and Epaster was the buyer of the

deferred month options. Specifically, at 14:00:57 and 14:01:29 CST, Epaster submitted two bids on Globex, respectively, to buy 100 March 2012 Japanese Yen call options with a 1000 strike price at an ask price of 2380. Globex rejected Epaster's bids as errors because the price exceeded the high end of the price band set by Globex. Epaster then submitted six additional bids between 14:03:23 and 14:07:19 CST at asking prices ranging from 2380 to 2130 and fifteen bids between 14:12:48 and 14:15:01 CST at asking prices ranging from 2170 to 2130, each to buy one March 2012 Japanese Yen call option contract with a 1000 strike price, presumably to determine the highest price that Globex would accept for that option. The bids ranging from 2380 to 2180 were rejected as errors and Epaster modified or canceled the others. 2170 was the highest price or near the highest price that Globex would accept for the March 2012 Japanese Yen call option on April 15, 2011.

At 14:10:02 CST, SMP entered a limit order on Globex to sell 100 March 2012 Japanese Yen call options contracts with a 1000 strike price at an ask price of 2170. Five minutes later, at 14:15:08, Epaster entered two limit orders on Globex to buy a total of 100 of the same call options contracts at the same price. The SMP and Epaster orders matched and were filled opposite each other at the 2170 price at 14:15:08 and 14:15:28, respectively. The settlement price for these call options on April 15, 2011 was 2118 and the closing price was 2080, both below SMP's and Epaster's trade price of 2170,

Also on April 15, 2011 between 14:16:17 and 14:16:29 CST, Epaster submitted four bids at asking prices ranging from 2570 to 2590, each to buy one Japanese Yen March 2012 put option with a strike price of 1450, presumably to determine the highest price that Globex would accept for this option. The 2590 bid was rejected by Globex and Epaster modified or canceled the other three bids. At 14:17:10 CST, SMP entered a limit order on Globex to sell 100 of these put options at an asking price of 2580. At 14:22:05 CST, Epaster entered a limit order to buy 100 of the same put options at a price of 2580. The SMP and Epaster orders matched and were filled opposite each other at 14:22:05. The settlement price for these put options on April 15, 2011 was 2541 and the closing price was 2577, both below SMP's and Epaster's trade price of 2580

On or around April 20, 2011, employees of one of the FCMs where SMP maintained trading accounts at the time advised SMP about the CME's rules prohibiting wash trades and the improper crossing of trades, and provided SMP with a copy of these rules. An SMP employee responded that SMP executed the trades to move exposure from one broker to another. The SMP employee also said that SMP would avoid similar trading in the future.

b. SMP's Wash Sales and Prearranged Trading

On April 20 and 29 and May 5, 2011, SMP took the opposite side of its own orders and was both the buyer and the seller of the March 2012 Japanese Yen options contract on the CME through accounts at two different US FCMs, hereafter referenced as FCM A and FCM B.

Specifically, on April 20, 2011 at 14:50:17, SMP entered a limit order to sell 100 March 2012 Japanese Yen call options contracts with a strike price of 1000 at a price of 2270 for its account at FCM A. At 14:59:56 and 15:00:10, SMP entered limit orders to buy 10 and 90 lots of

the same call options contracts at the same price for its account at FCM B. The 10 lot order was filled at 14:59:56 and the 90 lot order was filled at 15:00:10. There were no other bids or offers on Globex in this contract between 14:50:17 and 15:00:10 CST. The closing price for these call options was 2216 and the settlement price was 2217, both below SMP's trade price of 2270.

On April 29, 2011 at 14:17:27, SMP entered a limit order to sell 100 March 2012 Japanese Yen call options contracts with a strike price of 1000 at a price of 2440 for its account at FCM B. SMP subsequently entered limit orders to buy one and 99 lots of the same call options contracts at the same price for its account at FCM A. The one lot was executed at 14:20:26 and the 99 lot at 14:20:53, both at a price of 2440. There were no bids in the five minutes prior to these trades and SMP made the only offer during those five minutes at 2440. The settlement price for these options was 2331 and the closing price was 2386, both below SMP's trade price of 2440.

On May 5, 2011 at 14:18:02, SMP entered a limit order to sell 100 March 2012 Japanese Yen call options contracts with a strike price of 1000 at a price of 2570 for its account at FCM B. SMP subsequently entered two limit orders at 14:23:22 and 14:23:33, to buy one and 99 lots, respectively, at 2570 for its account at FCM A. The one lot was executed at 14:23:22 and the 99 lot at 14:22:33, both at a price of 2570. SMP was the only party bidding and offering on Globex in this contract on May 5, 2011 and all of its bids and offers were at a price of 2570. The settlement price for these call options on May 5, 2011 was 2514 and the closing price was 2457, both below SMP's trade price of 2570.

The timing of SMP's and Epaster's above described trades and the illiquidity of the deferred month Japanese Yen options contracts involved evidence that the trades were prearranged and non-competitively executed. All of the trades resulted from limit orders and were executed on the Globex electronic trading platform after the pit had closed at prices above the settlement and closing prices for the day. Further, between April 15, 2011 and May 31, 2011, the above described trades were the only trades that occurred in the March 2012 Japanese Yen options contract on Globex.

IV.

LEGAL DISCUSSION

A. Respondents Violated Section 4c(a) of the Act

Sections 4c(a)(1) and (2) of the Act, read together, provide, in relevant part, "It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction . . . involving the purchase or sale of any commodity for future delivery (or any option on such a transaction or option on a commodity) that (A) (i) is, is of the character of, or is commonly known to the trade as, a 'wash sale' or . . . (ii) is a fictitious sale; or (B) is used to cause any price to be reported, registered or recorded that is not a true and bona fide price." 7 U.S.C. § 6c(a)(1) and (2). "[T]he common denominator of the specific abuses prohibited in Section 4c(a) . . . 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 Collins* [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,982 at 31,902 (CFTC Apr. 4, 1986), *rev'd on other grounds sub nom. Stoller v. CFTC*, 834 F.2d 262 (2d Cir. 1987); *see also In re Mayer*,

[1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,259 at 46,134 (CFTC Dec. Feb. 3, 1998).

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

Here, SMP and Epaster, through their employees acting for them, knowingly entered into two fictitious sales by simultaneously buying and selling the same amount of the same Japanese Yen options contracts at the same price, while intending to negate the risk and price competition normally attendant to Japanese Yen options transactions at the time SMP and Epaster entered into them. SMP and Epaster, through their employees, knew that the transactions were fictitious because the same SMP employees controlled the SMP and Epaster accounts that traded opposite each other and made the trading decisions for both accounts.

To establish a violation of Section 4c(a) based on wash sales, the Commission must demonstrate (1) the simultaneous 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); *In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,653 (CFTC Jan. 25, 1991). In addition, the Commission must show that the defendants acted with the requisite mental state, namely, that they (1) intended to negate risk or price competition at the time the challenged transaction was initiated, and (2) knew at the time they chose to participate that the transaction was designed to achieve a wash result that negated risk. *Wilson*, 322 F.3d at 560; *Reddy v. CFTC*, 191 F.3d 109, 118-19 (2d Cir. 1999). Intent to negate risk, however, may be proved by inferences derived from circumstantial evidence, including evidence of aberrant trading patterns and motives for trading unrelated to the economics of the futures transaction. *See Reddy*, 191 F.3d at 118-19; *In re Rousso*, CFTC Docket No. 91-3, 1997 WL 422859, at *10 (CFTC July 29, 1997); *In re Buckwalter*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,995 at 37,684-85 (CFTC Jan. 25, 1991). Market risk and price competition are deemed negated “when [they are] reduced to a level that has no practical impact on the transactions at issue.” *In re Gimbel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep.

(CCH) ¶ 24,213 at 35,004 n.7 (CFTC Apr. 14, 1988), *aff'd as to liability*, 872 F.2d 196 (7th Cir. 1989); *see also Wilson*, 322 F.3d at 559.

SMP, through its employees acting on its behalf, executed three round-turn trades that were, or were of the character of, wash sales by simultaneously buying and selling the same quantities of the same options contracts at the same price. SMP intentionally negated price competition in the trades because they were executed in an illiquid market at prices above the market prices at the time, and SMP knew that the trades were riskless and resulted in a financial nullity. SMP therefore knew that the trades achieved a wash result.

B. Respondents Violated Commission Regulation 1.38(a)

Commission Regulation 1.38(a) provides, in relevant part:

Competitive execution required; exceptions. All purchases and sales of any commodity for future delivery, and of any commodity option, on or subject to the rules of a contract market shall be executed openly and competitively by open outcry or posting of bids and offers or by other equally open and competitive methods, in the trading pit or ring or similar place provided by the contract market, during the regular hours prescribed by the contract market for trading in such commodity or commodity option. . .

17 C.F.R. § 1.38(a). For the purposes of Regulation 1.38(a), “[n]oncompetitive trading consists of the use of trading techniques that negate risk or price competition that is incident to an open, competitive market.” *In re Avista Energy, Inc.*, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,623 at 52,358 (CFTC Aug. 21, 2001) (citing *In re Bear Stearns*, ¶24,994 at 37,662). *Scienter* is a necessary element of Regulation 1.38 and the Commission has routinely refused to find liability under the rule where the Division has failed to prove that respondent’s participation in the noncompetitive execution of futures trades was “knowing.” *E.g.*, *In re Buckwalter*, ¶ 24,995 at 37,685; *In re Bear Stearns & Co.*, ¶ 24,994 at 37,666; *In re Gilchrist*, ¶ 24,993 at 37,653 n.26. Here, the Division can show that SMP’s and Epaster’s options transactions were not executed openly and competitively as required by Regulation 1.38.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, SMP and Epaster violated Section 4c(a) of the Act and Regulation 1.38.

VI.

OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

- A. Acknowledge receipt of service of this Order;
- B. Admit 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. Waive:
 - 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 they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2012), relating to, or arising from, this proceeding;
 - 7. any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (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 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. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent(s) has/have consented in the Offer;
- E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:
 - 1. makes findings by the Commission that Respondents violated Section 4c(a) of the Act and Regulation 1.38;
 - 2. orders Respondents to cease and desist from violating Section 4c(a) and Regulation 1.38;
 - 3. orders Respondent SMP to pay a civil monetary penalty in the amount of seven hundred thousand dollars (\$700,000), and orders Respondent Epaster to pay a civil

monetary penalty in the amount of two hundred eighty thousand dollars (\$280,000), plus post-judgment interest;

4. orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VII of this Order.

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

VII.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondents shall cease and desist from violating Section 4c(a) of the Act, as amended 7 U.S.C. § 6c(a) and Regulation 1.38, 17 C.F.R. § 1.38 (2012).
- B. Respondent SMP shall pay a civil monetary penalty in the amount of seven hundred thousand dollars (\$700,000) and Respondent Epaster shall pay a civil monetary penalty of two hundred eighty thousand dollars (\$280,000) (the "CMP Obligation") within ten (10) days of the date of this Order. If the paying Respondent does not pay its CMP Obligation 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 (2006). Respondents 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:

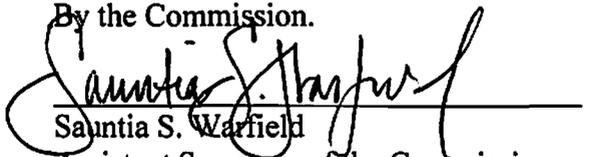
Commodity Futures Trading Commission
Division of Enforcement
ATTN: Accounts Receivables --- AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, Respondent(s) shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent(s) shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying 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. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondents agree that neither they nor any of their successors and assigns, agents or employees under their 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 Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.
 2. **Cooperation with the Commission:** Respondent(s) shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.
 3. **Partial Satisfaction:** Respondents understand and agree that any acceptance by the Commission of partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their 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.

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

By the Commission.


Sauntia S. Warfield
Assistant Secretary of the Commission
Commodity Futures Trading Commission

Dated: August 27, 2012