

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

MICHAEL A. RIFFICE

v.

CHICAGO MERCANTILE
EXCHANGE GROUP

CFTC Docket No. 09-E-1

ORDER

Office of
Proceedings
Clerk

2009 DEC -3 PM 4:32

Received
C.F.T.C.

Michael A. Riffice (“Riffice”) filed a notice of appeal upon receiving a warning letter from the Market Regulation Department (“Market Regulation”) of the Chicago Mercantile Exchange Group (“CME”) after it conducted a trade practice investigation. Because a warning letter is not an appealable exchange action, the Commission lacks jurisdiction to review this matter. Accordingly, Riffice’s appeal is dismissed.

BACKGROUND

During the relevant time, Riffice was an associated person of MF Global, Inc. and a member of the CME.¹ Riffice became aware of CME's investigation in August 2008, when the Director of Market Regulation contacted Riffice's attorney about scheduling an interview with him. The interview never occurred, however, and there were no further contacts until March 2009, when Riffice’s attorney received CME’s Letter of Warning (“Letter”).²

¹ According to CME Rule 400, the term Member includes “associated persons (“APs”) and affiliates of clearing members and member firms of the Exchange.”

² Riffice's two-page Notice of Appeal contains arguments in the nature of an appeal brief. The Letter was submitted as Exh. A to the Notice of Appeal. By delegated order issued May 22, 2009, the Commission stayed CME’s duty to file the record pending further order and stated that such further order would establish a briefing schedule. We find that Riffice’s pleading provides a sufficient basis to dispose of this matter without the need for briefing or additional development of the record.

The Letter informed Riffice that Market Regulation had decided to close its investigation with respect to him. The Letter nevertheless stated that Market Regulation had “identified 53 cross trades executed in 2006 and 2007, in which you and/or persons under your supervision or oversight, entered one or both sides of a trade ... in apparent violation” of exchange rules.³ Letter at 1. The Letter stated further that Riffice and other named and unnamed individuals who reported to him “engaged in impermissible pre-execution communications,” “withheld executable customer orders” and “crossed orders without allowing for the minimum required exposure period between the entry of the orders,” in violation of exchange rules. *Id.* Finally, the Letter stated that Riffice’s apparent failure to supervise his employees enabled them to trade in violation of exchange rules, and noted that “[f]ailure to properly supervise employees” is a rule violation. *Id.*

The Letter specifically advised Riffice of the requirements of relevant exchange rules and cautioned him that any future failure to follow the rules, particularly those discussed in the Letter, “may result in a referral to the CBOT or CME Probable Cause Committee.”⁴ *Id.* at 2. The Letter was issued pursuant to CBOT Rule 407 (“Initial Investigation, Assignment for Hearing and Notice of Charges”) and pursuant to the guidance of the CBOT Business Conduct Committee and its authority under CBOT Rule 402. *See* Notice of Appeal Exh. B.

³ The Letter described the rules in question as “legacy Chicago Board of Trade (“CBOT”)” rules, *i.e.*, rules adopted by the CBOT prior to its merger with the CME. The trades involved interest rate products and were executed on the e-cbot electronic trading platform. Letter at 1.

⁴ The Letter cited and quoted the following rules: CBOT Rule 533 (“Simultaneous Buy and Sell Orders for Different Beneficial Owners”); CBOT Rule 539.B (“Pre-Execution Communications Regarding Globex Trades Prohibited”); CBOT Rule 529 (“Withholding Orders Prohibited”); CBOT Rule 432.W (imposing a duty to “diligently supervise” employees); and CBOT Rule 432.Y (prohibition against “allowing those under your supervision to ‘improperly use the Globex platform’”). Letter at 1-2.

Riffice challenges the manner in which Market Regulation conducted its investigation, contending that the exchange staff denied him due process by failing to provide him with an opportunity to be heard or to present a defense. Riffice also contends that Market Regulation failed to comply with CBOT Rule 407 by failing to notify him of any interviews or depositions that may have taken place, and affording him an opportunity to participate. *See generally* Notice of Appeal. Finally, Riffice argues that to the extent that CME “implies that future violations may have further repercussions because of this Letter of Warning, [he] is placed in serious jeopardy.” *Id.* at 2. Accordingly, Riffice asks the Commission to vacate the Letter.

DISCUSSION

Section 8c(2)(b) of the Commodity Exchange Act (“CEA” or “Act”), 7 U.S.C. § 12c(2)(b) (2006), provides that the CFTC “may, in its discretion ... review any decision by an exchange whereby a person is suspended, expelled, otherwise disciplined, or denied access to the exchange” or “is adversely affected by any other exchange action.” The Commission's Part 9 Regulations (“Regulations”) implement the statute. *See* Regulation 9.1(a), 17 C.F.R. § 9.1(a) (2009) (reiterating the foregoing grant of statutory authority).

Riffice contends that the Letter is a disciplinary action. Notice of Appeal at 1. Regulation 9.2(b), 17 C.F.R. § 9.2(b) (2009) defines “disciplinary action” as “any suspension, expulsion or other penalty (as defined in § 8.03(i) of this chapter) imposed on a member of any exchange by that exchange for violations of rules of the exchange, including summary action.” Riffice does not contend that CME either suspended or expelled him. Moreover, it is clear that CME imposed no penalty.

Regulation 8.03(i), 17 C.F.R. § 8.03(i) (2009) defines “penalty” as:

any restriction, limitation, censure, fine, expulsion, suspension, revocation, reprimand, cease and desist order, sanction or any other disciplinary action for any amount or of any definite or indefinite period imposed upon any person within the disciplinary jurisdiction of an exchange upon a finding by the disciplinary committee that a violation has been committed or pursuant to the terms of a settlement agreement.

The regulation does not mention warning letters. In addition to Regulation 8.03(i)’s silence in this regard, Regulation 8.07(c), 17 C.F.R. § 8.07(c) (2009) states expressly that “[a] warning letter [issued at the conclusion of an investigation] is not a penalty or an indication that a finding of violation has been made.” The Commission’s Part 8 Regulations are persuasive guidance regarding the meaning of “penalty” in determining the CFTC’s Section 8 jurisdiction.⁵

To the extent Riffice might argue that the Letter constitutes “other adverse action,” a category that includes “any exchange action, other than an access denial action or disciplinary action, that adversely affects any person,” Regulation 9.2(g), 17 C.F.R. § 9.2(g) (2009), he identifies no “adverse action” taken against him by CME and the Letter indicates none. The Letter simply “caution[s] [Riffice] that any future failure to follow CME Group’s rules, particularly those discussed above, may result in a referral to the CBOT or CME Probable Cause Committee.” Letter at 2. Riffice appears to suggest that he will be subject to heightened scrutiny by virtue of the Letter’s issuance, but offers no evidence to support that assertion. In any event, the possibility of heightened scrutiny is not sufficiently concrete to be reviewable as

⁵ CBOT Rule 407 echoes the Commission’s regulation, providing in relevant part: “Upon conclusion of an investigation, the Market Regulation Department may issue a warning letter to the Member under investigation. Such letter shall not constitute either the finding of a rule violation or a penalty.”

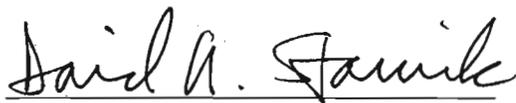
an adverse action. Regulation 9.2(g), 17 C.F.R. § 9.2(g) (2009). Accordingly, the CFTC is without jurisdiction in this matter.

CONCLUSION

For the foregoing reasons, Riffice's appeal is dismissed for lack of jurisdiction under Section 8c(b) of the Act, 7 U.S.C. § 12c(b) (2006). Riffice's filing fee shall be returned.

IT IS SO ORDERED.

By the Commission (Chairman GENSLER and Commissioners DUNN, SOMMERS, CHILTON and O'MALIA).



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

Dated: December 3, 2009