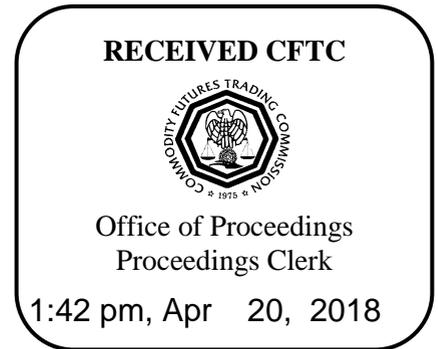




**U.S. COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
[www.cftc.gov](http://www.cftc.gov)

Office of Proceedings



\_\_\_\_\_  
SEAN WARAICH,  
Complainant,

v.

NATIONAL AUSTRALIA BANK,  
LIMITED,  
Respondent.

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CFTC Docket No. 17-R011  
Served electronically

**FINAL DECISION**

The parties have elected the voluntary decisional procedure. Under the voluntary decisional procedure, the parties are principally responsible for developing the evidentiary record, and the parties waive: the opportunity for an oral hearing; the right to receive a written statement of the findings of fact upon which the Final Decision is based; and the right to appeal this Final Decision to the Commission and to the federal courts. *See* Commission Rules 12.100(b), 12.106(d).

After carefully reviewing the legal and evidentiary record, I find that Complainant has failed to establish, by a preponderance of the evidence, any violations of the Commodity Exchange Act or Commission regulations by

Respondent proximately causing damages. Accordingly, the complaint in this matter is DISMISSED.<sup>1</sup>

In addition, Respondent's request that its pleadings be accorded confidential treatment by the Office of Proceedings is DENIED. "Documents contained in reparations . . . cases, unless subject to a protective order" are available to the public "directly from the [Office of Proceedings]." 17 C.F.R. Part 145 Appendix A. Respondent, a sophisticated financial institution represented by outside counsel, never filed a motion for a protective order under Commission Rule 12.30(b)(2). And indeed no protective order was or is necessary in this case, as no discovery has been or will be undertaken. Respondent's generic assertion that its pleadings contain highly sensitive or confidential material, and/or Section 8 material under the Commodity Exchange Act, is misguided. Not only did Respondent's fail to identify any such information for this Office to consider, there is no such information contained in the scant paper filed in this case.<sup>2</sup>

This matter is DISMISSED and Respondent's request for confidential treatment of its pleadings by this Office is DENIED.

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<sup>1</sup> This case was assigned to me on November 15, 2017. On April 9, 2018, I was appointed by the Commission as its Judgment Officer, though I had served that function since July 2017. *See* <https://www.cftc.gov/LawRegulation/OpinionsAdjudicatoryOrders/index.htm> (Appointment Order), appended as Appendix A to this Order of Dismissal. Pursuant to the Appointment Order, I have reviewed the actions I have undertaken in this case, all of which were administrative in nature, between its assignment to me on November 15, 2017 and my appointment on April 9, 2018 and determined that none require revision. I therefore ratify all prior actions undertaken in this case.

<sup>2</sup> This Office takes no position on the request made pursuant to the Freedom of Information Act because it is not before this Office, but before the FOIA Office.

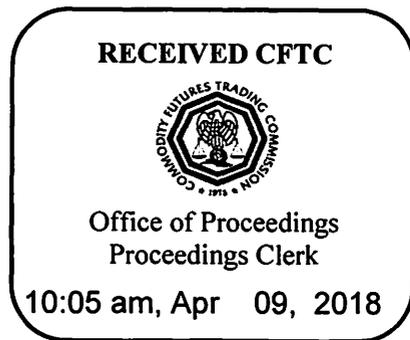
DATED: April 20, 2018



Kavita Kumar Puri,  
Judgment Officer

Appendix A:  
CFTC Appointment Order  
(dated April 9, 2018)

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION



\_\_\_\_\_)  
In re: )  
Pending Administrative Proceedings )  
\_\_\_\_\_)

**RATIFICATION AND  
RECONSIDERATION  
ORDER**

On November 29, 2017, the Solicitor General on behalf of the United States submitted a brief in *Raymond J. Lucia and Raymond J. Lucia Companies, Inc. v. Securities and Exchange Commission* (No. 17-130) in which the Solicitor General agreed with the petitioners that the U.S. Supreme Court should decide whether administrative law judges of the Securities and Exchange Commission (“SEC”) are Inferior Officers under the Appointments Clause, U.S. Const. art. II, § 2, cl. 2. The Solicitor General took the position that SEC administrative law judges are Inferior Officers for purposes of the Appointments Clause but recommended that the Supreme Court appoint an amicus curiae to defend the contrary judgment of the Court of Appeals for the District of Columbia Circuit.

The Commission employs no administrative law judges. The Commission does employ a Judgment Officer, but makes no determination about whether the Judgment Officer is akin to an SEC administrative law judge for purposes of the Appointments Clause. Nevertheless, the Commission—in its capacity as head of a department—hereby ratifies the agency’s prior appointment of Judgment Officer Kavita Kumar Puri.

In addition, the Commission orders the Judgment Officer, in proceedings now pending before her, to undertake the following actions in each of those proceedings:

- Reconsider the record, including all substantive and procedural actions taken;
- Issue an order granting parties until April 25, 2018, to submit any new evidence the parties deem relevant to the Judgment Officer’s reexamination of the record;
- Determine, based on such reconsideration, whether to ratify or revise in any respect all prior actions taken by the Judgment Officer in the proceeding; and
- By June 8, 2018, issue an order in each case stating that the Judgment Officer has completed the reconsideration ordered above and setting forth a determination regarding ratification.

The Commission hereby tolls the time periods in Part 12 of the Commission’s Regulations until the Judgment Officer issues the order on ratification. The Judgment Officer is directed to notify the parties in the cases pending before them of this order.

In matters pending before the Commission in which the Judgment Officer has issued a decision, the Commission hereby remands such matters to the Judgment Officer. A list of matters is attached as Exhibit A to this Order. The Judgment Officer is ordered to undertake the following actions in each of those proceedings:

- Reconsider the record, including all substantive and procedural actions taken by the Judgment Officer;
- Issue an order granting parties until April 25, 2018, to submit any new evidence the parties deem relevant to the Judgment Officer's reexamination of the record;
- Determine, based on such reconsideration, whether to ratify or revise in any respect all prior actions taken by the Judgment Officer in the proceeding; and
- By June 8, 2018, issue an order in each case stating that the Judgment Officer has completed the reconsideration ordered above and setting forth the determination regarding ratification.

The Judgment Officer may, for good cause shown, modify these deadlines, including the date by which the Judgment Officer's order on ratification is to be issued.

IT IS SO ORDERED.

By the Commission (Chairman GIANCARLO and Commissioners QUINTENZ and BEHNAM).

  
\_\_\_\_\_  
Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: April 6, 2018

**Exhibit A**  
**to the Commission's Ratification and Reconsideration Order**

- *Ronald S. Draper v. Main Street Trading, Incorporated, Wedbush Securities, Incorporated, KCG Americas LLC, and Patrick J. Flynn, No. 16-R003*
- *Suntex Corporation v. Jacob Michael Hinkle, John William Sendlosky, and Trade Station Securities, Incorporated, No. 16-R006*