

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of

Robert Benjamin Harmon, Jr.,

Respondent.

CFTC Docket No: 03-25

COMPLAINT AND NOTICE OF HEARING
PURSUANT TO SECTIONS 6(c), 6(d) AND
8a(4) OF THE COMMODITY EXCHANGE
ACT

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The Commodity Futures Trading Commission ("Commission") has received evidence from its staff which tends to show, and the Commission's Division of Enforcement ("Division") alleges, that:

I.

SUMMARY

1. On at least four days in July 2000, Robert Benjamin Harmon, Jr., an independent floor broker on the New York Mercantile Exchange ("NYMEX"), engaged in illegal wash sales in the NYMEX Crude Oil pit, in violation of Section 4c(a)(A) and (B) of the Commodity Exchange Act (the "Act"), 7 U.S.C. § 6c(a)(A) and (B) (1994), and Commission Regulation ("Regulation") 1.38, 17 C.F.R. § 1.38 (2002).

2. Trading for his personal account, Harmon entered into a series of trades on the NYMEX that constituted illegal wash sales. Harmon and another floor broker bought and sold Crude Oil futures contracts in the same quantities and contract months and at the same averaged prices. The net outcome was neither a profit nor loss to either Harmon or the other broker.

II.
RESPONDENT

3. **Robert Benjamin Harmon, Jr.** resides in Cos Cob, Connecticut, 06807.

Harmon has been registered as a floor broker pursuant to Sections 4e and 4f of the Act, 7 U.S.C. §§ 6c and 6f since February 2000. Harmon has been a member of the NYMEX since January 2000, and has been a member of the Commodity Exchange (“COMEX”) since March 1979.

III.
FACTS

4. On at least four days in July 2000, Harmon and another floor broker, while trading for their own accounts, engaged in 80 illegal wash trades in the NYMEX Crude Oil Pit.

5. Harmon and the other floor broker bought and sold opposite each other for the same quantities and contract months, at the same averaged prices.

6. In each day’s transactions, the net outcome was neither a gain nor a loss to either Harmon or the other floor broker.

7. The transactions entered into by Harmon and the other floor broker were often composed of one- or two-lot trades during slower market periods.

8. In so doing, Harmon and the other floor broker avoided the risk legitimate futures trading involves when taking a *bona fide* position in the market by structuring their trades to result in neither a gain nor a loss.

9. By engaging in illegal wash trades, Harmon caused prices to be reported, registered or recorded that were not true and *bona fide*.

IV. VIOLATIONS OF THE ACT AND REGULATIONS

COUNT ONE

VIOLATIONS OF SECTION 4c(a)(A) OF THE ACT: WASH SALES

10. Paragraphs 1 through 9 are realleged and incorporated herein by reference.

11. Section 4c(a)(A) of the Act, 7 U.S.C. § 6c(a)(A) (1994), makes it unlawful for any person to offer to enter into, enter into or confirm the execution of a transaction for future delivery which is, is of the character of, or is commonly known to the trade as, a wash sale transaction.

12. By engaging in the transactions described in paragraphs 1-9 above, Harmon engaged in wash sale transactions, in violation of Section 4c(a)(A) of the Act.

13. Each and every transaction in which Harmon offered to enter into, entered into, or confirmed the execution of a wash sales transaction, is alleged as a separate and distinct violation of Section 4c(a)(A) of the Act.

COUNT TWO

VIOLATIONS OF SECTION 4c(a)(B) OF THE ACT: REPORTING, REGISTERING OR RECORDING PRICES WHICH ARE NOT TRUE OR *BONA FIDE*

14. Paragraphs 1 through 13 are realleged and incorporated herein by reference.

15. Section 4c(a)(B) of the Act, 7 U.S.C. § 6c(a)(B) (1994), makes it unlawful to confirm the execution of any commodity futures transaction if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and *bona fide* price.

16. By engaging in the transactions described in paragraphs 1-9 above, the prices that were reported by Harmon were not *bona fide*, in violation of Section 4c(a)(B) of the Act.

17. Each and every transaction for which Harmon caused prices to be reported, registered, or recorded that were not true and *bona fide* prices is alleged as a separate and distinct violation of 4c(a)(B) of the Act.

COUNT THREE

VIOLATIONS OF COMMISSION REGULATION 1.38: NONCOMPETITIVE TRADING

18. Paragraphs 1 through 17 are realleged and incorporated herein by reference.

19. Commission Regulation 1.38, 17 C.F.R. § 1.38 (2001), requires that all purchases and sales of any commodity for future delivery, and all sales 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 except for noncompetitive transactions executed in accordance with exchange rules.

20. By engaging in the transactions described in paragraphs 1-9 above, Harmon's trades were structured to result in neither a gain nor a loss to Harmon or the opposite floor broker, had no intent to take a *bona fide* position in the market, and avoided the market risk that legitimate, competitive trading entails, in violation of Regulation 1.38.

21. Each and every noncompetitive, non-*bona fide* transaction that Harmon executed is alleged as a separate and distinct violation of Regulation 1.38.

V.

By reason of the foregoing allegations, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute public administrative proceedings to determine whether the allegations set forth in Parts I-IV above are true, and, if so,

whether an appropriate order should be entered in accordance with Sections 6(c), 6(d), and 8a(4) of the Act, 7 U.S.C. §§ 9, 15, 13b and 12a(4) (2001).

Section 6(c) allows the Commission to enter an order (1) prohibiting a respondent from trading on or subject to the rules of any registered entity and requiring all registered entities to refuse such person all privileges thereon for such a period as may be specified in the Commission's Order, (2) if the respondent is registered with the Commission in any capacity, suspending, for a period not to exceed six months, or revoking the registration of that respondent, (3) assessing against the respondent a civil penalty not more than the higher of \$110,000, for actions prior to October 22, 2000, or triple the monetary gain to the respondent for each violation of the Act or Regulations, and (4) requiring restitution to customers of damages proximately caused by the violations of the respondent.

Section 6(d) allows the Commission to enter an Order directing that the respondent cease and desist from violating the provisions of the Act and Regulations found to have been violated.

Section 8a(4) allows the Commission to suspend, to revoke or to place restrictions upon the registration of any respondent if cause exists for such action.

VI.

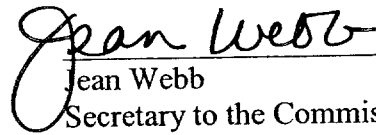
WHEREFORE, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence and hearing arguments on the allegations set forth in Parts I-IV above be held before an Administrative Law Judge, in accordance with the Rules of Practice under the Act, 17 C.F.R. § 10.1 et seq. (2002), at a time and place to be fixed as provided in Section 10.61 of the Rules of Practice, 17 C.F.R. § 10.61 (2002), and that all post-hearing procedures shall be conducted pursuant to Sections 10.81 through 10.107 of the Rules of Practice, 17 C.F.R. §§ 10.81 through 10.107 (2002).

IT IS FURTHER ORDERED that Harmon shall file an Answer to the allegations contained in this Complaint within twenty (20) days after service, pursuant to Section 10.23 of the Commission's Rules, 17 C.F.R. § 10.23 (2002). Such answer must be filed with the Hearing Clerk, Office of Hearings and Appeals, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st St., N.W., Washington, D.C. 20581, and pursuant to Section 10.12(a) of the Rules of Practice, 17 C.F.R. § 10.12(a) (2002), Harmon shall serve two copies of such Answer and of any document filed in this proceeding upon Karen Kenmotsu or Lawrence Green, Trial Attorneys, Commodity Futures Trading Commission, Division of Enforcement, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, by non-U.S. Postal delivery means (such as Federal Express or United Parcel Service), or by facsimile to 202-418-5538, or upon such other counsel as may be designated by the Division. If Harmon fails to file the required Answer or fails to appear at a hearing after being duly served, he shall be deemed in default, and the proceeding may be determined against him upon consideration of the Complaint, the allegations of which shall be deemed to be true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served on Harmon personally or by certified or registered mail forthwith pursuant to Section 10.22 of the Commission's Rules, 17 C.F.R. § 10.22 (2002).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of the investigative or prosecutorial functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter except as witness or counsel in proceedings held pursuant to notice.

By the Commission.



Jean Webb
Secretary to the Commission
Commodity Futures Trading Commission

Date: September 8, 2003