

**UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION**

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Office of Proceedings  
Proceedings Clerk

11:13 am, Sep 30, 2013

In the Matter of:

Dominick Anthony Cognata,

Registrant.

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) CFTC Docket No. SD 13-06  
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**NOTICE OF INTENT TO REVOKE THE REGISTRATION  
OF DOMINICK ANTHONY COGNATA**

**I.**

The U.S. Commodity Futures Trading Commission (“Commission”) has received information from its staff that tends to show, and the Commission’s Division of Enforcement (“Division”) alleges and is prepared to prove, that:

1. Dominick Anthony Cognata (“Cognata”) resides in New York, NY.
2. From May 5, 2005 to the present, Cognata has been registered with the Commission as a floor broker, pursuant to Sections 4e and 4f of the Commodity Exchange Act, 7 U.S.C. §§ 6e and 6f.<sup>1</sup> During that same period, Cognata has been a member of the Commodity Exchange, Inc. (“COMEX”), which has been designated as a contract market by the Commission.

**Exchange Disciplinary Actions**

3. On August 9, 2011, pursuant to an offer of settlement in which Cognata neither admitted nor denied any rule violations, a panel of the COMEX Business Conduct Committee (the “Panel”) found:

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<sup>1</sup> Unless otherwise noted, all citations to the United States Code herein are to the 2012 edition. Unless otherwise noted, all citations to the Code of Federal Regulations are to the 2013 edition.

1. From October 2008 to December 4, 2008, Cognata engaged in four (4) noncompetitive, prearranged trades of COMEX Silver and Gold options while in possession of executable customer orders that he withheld from the marketplace and allowed other select traders to realize gains by noncompetitively trading opposite these orders.
2. On November 13, 2008, Cognata engaged in noncompetitive, prearranged trades of COMEX Silver options opposite another broker's customer order without bidding or offering in the ring.
3. On November 21, 2008, Cognata accepted a profiting round-turn transaction into his personal account that was executed noncompetitively by another trader.

The Panel (1) found that Cognata violated Legacy COMEX Rules 104.21, 104.27, 104.34, and Legacy New York Mercantile Exchange, Inc. ("NYMEX") Rules 8.55(A)(18) and 8.55(B)(2), (2) ordered Cognata to pay a \$135,000 fine, \$1,400 disgorgement, and \$44,700 in customer restitution, and (3) imposed a two-week trading ban and suspension of membership.<sup>2</sup>

4. On February 12, 2013, pursuant to an offer of settlement in which Cognata neither admitted nor denied any rule violations, the Panel found that on three occasions in June and July 2011, Cognata prearranged round-turn trades in Silver Options on the trading floor for the purpose of receiving money passes from other COMEX members in violation of COMEX Rules 432.G, 521 and 539.A. and C. The Panel ordered Cognata to pay a \$20,000 fine, and imposed a 20-day trading ban and suspension of membership.

**Violation of Section 4g of the Act and Commission Regulations 1.31(a) and 1.35(a)**

5. On August 14, 2012, in connection with its investigation into Cognata's trading activity, the Division served on Cognata a subpoena ("August 14 Subpoena"), pursuant to Sections 6(c) and 8(a)(1) of the Act, 7 U.S.C. §§ 9 and 12(a)(1), for the production on or before August 28, 2012, of various documents, including "trading cards and order tickets used in the

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<sup>2</sup> Following their acquisition by CME Group Inc., the NYMEX and COMEX undertook efforts to harmonize their rule books with those of CME Group's other exchanges. Exchange disciplinary actions brought after harmonization, but which involved violations of exchange rules occurring prior to harmonization, were brought under the NYMEX and COMEX rules in effect at the time the violation occurred, referred to herein as "legacy" rules.

trading of silver or gold futures or silver or gold options on futures” from “January 1, 2008 to the present.”

6. On August 31, 2012, Cognata, through his counsel (“Cognata’s Counsel”), informed Division staff that Cognata was invoking his privilege against self-incrimination under the Fifth Amendment to the United States Constitution and thus refused to produce any documents in response to the subpoena.

7. The Fifth Amendment privilege against self-incrimination does not apply to records such as those requested by Division staff, i.e., trading cards and order tickets, which are required by law to be kept as records of transactions subject to government regulation.

8. Via letter dated January 31, 2013 (the “January 31 Letter”), Division staff wrote to Cognata’s Counsel, confirming its understanding that Cognata “d[id] not intend to produce any responsive documents called for by the CFTC’s August 14, 2012 subpoena, nor make responsive documents available for inspection by CFTC staff, pursuant to Section 4g(a) of the Act and Commission Regulations 1.31 and 1.35.” The letter requested a response if Division staff’s understanding was incorrect. The Division did not receive such a response.

9. Under Section 4g of the Act, 7 U.S.C. § 6g, Cognata, as a Commission-registered COMEX floor broker, must (1) make such reports as required by the Commission regarding, among other things, his own transactions and transactions for customers; (2) keep books and records pertaining to such transactions in the form and manner required by the Commission; and (3) keep such books and records “open to inspection” by Commission representatives.

10. Commission Regulation 1.31(a), 17 C.F.R. § 1.31(a), mandates, in pertinent part, that all books and records required to be kept by the Act or Commission Regulations be “open to inspection” by any representative of the Commission and provided to such representative “upon

the representative's request." Also, Commission Regulation 1.31(a)(2), 17 C.F.R. § 1.31(a)(2), requires that when requested by a Commission representative, either the originals or copies of such records "shall be provided promptly."

11. Commission Regulation 1.35(a) mandates that a member of a contract market must maintain and produce for inspection required records for inspection such as trading cards and order tickets, and furnish true and correct information and reports when and as requested by an authorized representative of the Commission. Further, Commission Regulation 1.35(d), 17 C.F.R. § 1.35(d), mandates that members of contract markets prepare trading cards or similar records documenting their trades.

12. Cognata has not produced, or otherwise made available to the Division for inspection, the trading cards, order tickets or similar other records documenting his trades requested by the August 14 Subpoena and January 31 Letter.

13. Cognata violated Section 4g of the Act, 7 U.S.C. § 6g, and Commission Regulations 1.31(a) and 1.35(a), 17 C.F.R. §§ 1.31(a) and 1.35(a), by failing to timely provide to the Division, in response to the August 14 Subpoena, his trading cards, order tickets or other records documenting his trades and/or failing to keep such records open to inspection upon request.

#### **Authority for Revocation**

14. The facts set forth above constitute good cause for the statutory disqualification of Cognata from registration under Section 8a(3)(M), 7 U.S.C. § 12a(3)(M), which provides a basis for suspending, revoking, or restricting his registration under Section 8a(4) of the Act, 7 U.S.C. § 12a(4).

## II.

15. Pursuant to Commission Regulation 3.60(a), 17 C.F.R. § 3.60(a), Cognata is hereby notified that a public proceeding shall be conducted in accordance with the provisions of Commission Regulation 3.60, 17 C.F.R. § 3.60 and Part 10 of the Commission's Regulations, 17 C.F.R. § 10.1 *et seq.*, on the following questions:

(a) Whether Cognata's registration is subject to revocation, suspension or restriction under Sections 8a(3)(M) and 8a(4) of the Act, 7 U.S.C. § 12a(3)(M) and 12a(4), as set forth in Section I above; and

(b) If the answers to question (a) is affirmative, then whether the registration of Cognata as a floor broker should be revoked, suspended or restricted.

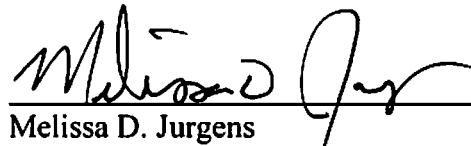
16. Such proceeding shall be held before an Administrative Law Judge in accordance with Commission Regulations 3.60 and 10.8, 17 C.F.R. §§ 3.60 and 10.8, and all post-hearing procedures shall be conducted pursuant to Commission Regulations 3.60(i)-(j), 17 C.F.R. § 3.60(i)-(j).

17. In accordance with the provisions of Commission Regulation 3.60(a)(3), 17 C.F.R. § 3.60(a)(3), Cognata is entitled to file a response challenging the evidentiary bases of the statutory disqualification or show cause why, notwithstanding the accuracy of the allegations, his registration should not be revoked, suspended or restricted. Such response must be filed with the Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, and served upon K. Brent Tomer, Trial Attorney, Division of Enforcement, Eastern Regional Office, 140 Broadway, 19th Fl., New York, NY, 10005, within thirty (30) days after the date of service of this Notice upon Cognata, in accordance with the provisions of Commission Regulation 3.60(b), 17 C.F.R. §

3.60(b). If Cognata fails to file a timely response to this Notice, he will be deemed to have waived his right to a hearing, the allegations set forth herein shall be deemed to be true, and the Administrative Law Judge may issue an Order of Default in accordance with the provisions of Commission Regulation 3.60(g), 17 C.F.R. § 3.60(g).

**III.**

18. The Proceedings Clerk shall serve this Notice of Intent to Revoke the Registration of Dominick A. Cognata in accordance with Commission Regulation 3.50, 17 C.F.R. § 3.50, or by any other means permitted under the Act or Commission Regulations.

  
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Melissa D. Jurgens  
Secretary of the Commission  
Commodity Futures Trading Commission

Dated: September 30, 2013