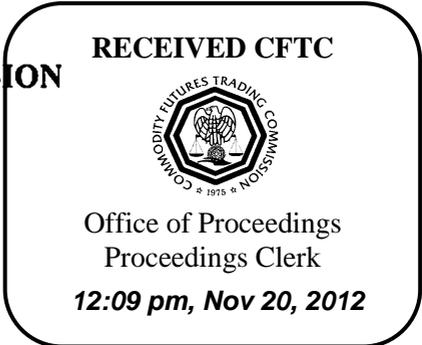


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



In the Matter of:)
)
Eagle Market Makers Inc.,)
)
Respondent.)
)
_____)

CFTC Docket No. 13-05

ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, AS AMENDED,
MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that on April 29, 2009, Eagle Market Makers Inc. (“Respondent” or “Eagle”) violated Section 4a(b)(2) of the Commodity Exchange Act, as amended, (the “Act”) and Commission Regulations 150.2 and 166.3 (“Regulations”). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Respondent consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Respondent does not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does Respondent 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.

III.

The Commission finds the following:

A. SUMMARY

On April 29, 2009, Respondent held a net short May 2009 corn futures position that exceeded the spot month speculative position limits established by the Commission. In addition, Respondent did not diligently supervise its traders with respect to speculative position limits.

B. RESPONDENT

Eagle Market Makers Inc. is a Chicago-based firm that makes markets in exchange-traded futures contracts, with a significant presence in the agricultural futures complex. Eagle is currently registered with the Commission as a commodity pool operator (“CPO”), commodity trading advisor (“CTA”), and futures commission merchant (“FCM”).

C. FACTS

Spot-Month Speculative Position Limits Violated

Regulation 150.2 sets the spot-month speculative position limits for corn futures contracts at 600 net long or net short.

As of the close of trading on April 29, 2009, Eagle held a net short position in its proprietary accounts of 878 Chicago Board of Trade (“CBOT”) corn futures contracts for May 2009 delivery. The May 2009 corn futures became the spot month contracts, and therefore subject to federal spot month speculative position limit regulations, as of the close of open outcry trading on April 29, 2009. Eagle identified the excess short position shortly after the end of trading on April 29, 2009, and the excess position was liquidated upon the opening of the next trading session. Eagle lacked a hedge exemption for the trading in question and was thus in violation of these regulations when it exceeded the 600-lot limit. Eagle’s profits from the corn futures contracts that exceeded position limits were approximately \$3,475.

Failure to Supervise

In addition, Eagle did not diligently supervise its traders with respect to compliance with futures speculative position limits. Prior to the position limit violation on April 29, 2009, Eagle had never conducted training of its traders with respect to speculative position limits nor did it have documented procedures concerning speculative position limits. In 2008, Eagle received two separate warning letters from CBOT that it may have violated CBOT position limits concerning corn futures spot month speculative position limits, and yet Eagle did not institute training to improve its supervision of its traders regarding position limit compliance. Moreover, on April 21, 2009, CBOT issued a warning letter to Eagle stating that on April 20-21, 2009, Eagle had violated CBOT single month and all-month combined speculative position limits in wheat futures. As a result, on July 30, 2009, CBOT issued a cease and desist order against Eagle.

IV.

LEGAL DISCUSSION

A. **By Exceeding the Commission's Position Limits, Respondent Violated Section 4a(b)(2) of the Act and Regulation 150.2**

Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2), provided, at the time in question and in relevant part, that it is unlawful for any person:

directly or indirectly to hold or control a net long or a net short position in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility or electronic trading facility with respect to a significant price discovery contract in excess of any position limit fixed by the Commission for or with respect to such commodity: Provided, That such position limit shall not apply to a position acquired in good faith prior to the effective date of such rule, regulation, or order.

Regulation 150.2 establishes speculative position limits in certain futures contracts, including corn, and states, in relevant part, “no person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of,” the 600-contract spot month speculative position limit. 17 C.F.R. § 150.2.

By exceeding the limits fixed by Regulation 150.2, Respondent violated Section 4a(b)(2) of the Act and Regulation 150.2. The Commission does not need to establish scienter – *i.e.*, proof of intent to exceed the applicable speculative position limit – in order to prove a violation of the Commission’s speculative position limit provisions. *CFTC v. Hunt*, 591 F.2d 1211, 1218 (7th Cir. 1979); *Saberi v. CFTC*, 488 F.3d 1207, 1212 (9th Cir. 2007). The Act “unambiguously imposes liability” for violations of speculative position limits. *Saberi*, 488 F.3d at 1212 (rejecting trader’s contention that the Division was required to prove that he intended to violate the speculative position limits in frozen pork bellies futures set forth in CME Rule 8032.E) (citing *Hunt*, 591 F.2d at 1218).

B. **Eagle Failed to Supervise Diligently Its Officers, Employees, and Agents Responsible for the Speculative Position Limit Violation**

Regulation 166.3, 17 C.F.R. § 166.3, requires:

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

A violation under Regulation 166.3 is an independent violation for which no underlying violation is necessary. See *In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,744 (CFTC Dec. 10, 1997).

A violation of Regulation 166.3 is demonstrated by showing either that: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In re Murlas Commodities*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,485 at 43,161 (CFTC Sept. 1, 1995); *In re GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 (CFTC Aug. 11, 1992) (providing that, even if an adequate supervisory system is in place, Regulation 166.3 can still be violated if the supervisory system is not diligently administered); *In re Paragon Futures Assoc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992) ("The focus of any proceeding to determine whether Rule 166.3 has been violated will be on whether [a] review [has] occurred and, if it did, whether it was diligent"); *Samson Refining Co. v. Drexel Burnham Lambert, Inc.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,596 at 36,566 (CFTC Feb. 16, 1990) (noting that, under Regulation 166.3, an FCM has a "duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents") (internal quotation omitted). The lack of an adequate supervisory system can be established by showing that the registrant failed to develop proper procedures for detecting wrongdoing. *CFTC v. Trinity Fin. Group, Inc.*, [1996-1998- Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 27,179 at 45,635 (S.D. Fl. Sept. 29, 1997), *aff'd in part, vacated in part and remanded sub. nom. Sidoti v. CFTC*, 178 F.3d 1132 (11th Cir. 1999). Evidence of violations that "should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly" is probative of a failure to supervise. *In re Paragon Futures Assoc.*, ¶ 25,266 at 38,850.

Eagle employed an inadequate supervisory system and failed to perform its supervisory duties diligently. Eagle never conducted any formal training of its traders with respect to speculative position limits and had no documented procedures regarding speculative position limits. In 2008, CBOT had warned Eagle on two occasions about spot-month speculative corn futures position limit violations. In addition, on April 21, 2009, CBOT issued a warning letter to Eagle for wheat future violations and which resulted in a CBOT cease and desist order against Eagle on July 30, 2009. These prior incidents, combined with the lack of any training of Eagle's traders and the lack of documented supervisory procedures for speculative position limits, demonstrate that Eagle failed to diligently supervise its employees in violation of Regulation 166.3. Eagle has since implemented a written compliance manual, as well as formal, documented training and supervisory procedures.

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that on April 29, 2009, Eagle violated Section 4a(b)(2) of the Act and Regulations 150.2 and 166.3.

VI.

OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits 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. Waives:
 - 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 it 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 it 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. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
 - 1. makes findings by the Commission that Respondent violated Section 4a(b)(2) of the Act and Regulations 150.2 and 166.3;
 - 2. orders Respondent to cease and desist from violating Section 4a(b)(2) of the Act and Regulations 150.2 and 166.3;
 - 3. orders Respondent to pay a civil monetary penalty in the amount of two hundred twenty thousand dollars (\$220,000), plus post-judgment interest; and
 - 4. orders Respondent to comply with the conditions and undertakings consented to in the Offer and a 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. Respondent shall cease and desist from violating Section 4a(b)(2) of the Act and Regulations 150.2 and 166.3.
- B. Respondent shall pay a civil monetary penalty of two hundred twenty thousand dollars (\$220,000) within ten (10) days of the date of entry of this Order (the "CMP Obligation"). 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). Respondent 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 shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent 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 and to the Regional Counsel, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005.

C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. **Public Statements:** Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its 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 Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
2. **Disgorgement:** Respondent agrees to pay disgorgement in the amount of three thousand, four hundred seventy-five dollars (\$3,475) within ten (10) days of the entry of this Order ("Disgorgement Obligation").

Respondent shall pay the Disgorgement Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is 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

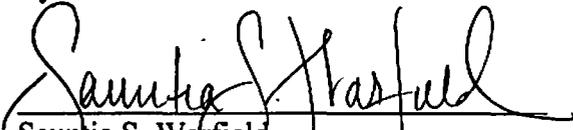
If payment is to be made by electronic funds transfer, Respondent shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall

accompany payment of the Disgorgement 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, DC 20581 and to the Regional Counsel, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005.

- D. Partial Satisfaction: Respondent understands that any acceptance by the Commission of partial payment of Respondent's CMP Obligation or Disgorgement Obligation shall not be deemed a waiver of its 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: November 20, 2012