

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

RECEIVED CFTC



Office of Proceedings
Proceedings Clerk

11:02 am, Mar 24, 2014

In the Matter of)

Morgan Stanley Capital Group Inc.,)

Respondent.)
)
)
)
)

CFTC Docket No. 14- 10

**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 Morgan Stanley Capital Group Inc. (“Respondent” or “MSCGI”) violated Section 4a(b)(2) of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. § 6a(b)(2) (2012), and Commission Regulation 150.2, 17 C.F.R. § 150.2 (2013). 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

Beginning January 14, 2013, MSCGI held in its house accounts net long positions in the Chicago Board of Trade's ("CBOT") soybean meal contract in excess of the all-months speculative position limit established by the Commission. On January 16, 2013, MSCGI reduced its position below the CBOT soybean meal all-months position limit.

B. RESPONDENT

Morgan Stanley Capital Group, Inc. is a company conducting business on behalf of the commodities division of Morgan Stanley, a Delaware corporation. MSCGI trades commodity futures, derivatives and physicals, and is a non-clearing member of the CBOT, a board of trade designated by the Commission as a contract market. MSCGI has been provisionally registered with the Commission as a swap dealer since December 31, 2012.

C. FACTS

Commission Regulation 150.2, 17 C.F.R. § 150.2 (2013), sets the speculative position limits for CBOT soybean meal futures contracts, among other agricultural contracts, including limits for the number of contracts for the spot month, any single month and all months of trading. Under Commission Regulation 150.2, the all months limit for soybean meal futures is 6,500 contracts.

On January 14, 2013, MSCGI's net long all-months position in its house accounts exceeded the CBOT soybean meal all-months position limit of 6,500 contracts set forth in Commission Regulation 150.2. This net long position consisted of net long positions held by its commodity index desk to hedge its financial exposure to the Dow Jones-UBS Commodity Index and the holdings of MSCGI's other trading desks. After MSCGI discovered that its position exceeded the soybean meal all-months position limit, it contacted the Commission's Division of Market Oversight.

On January 15, 2013, MSCGI decreased its net long position in CBOT soybean meal futures, but its position still exceeded the soybean all-months position limit

On January 16, 2013, MSCGI reduced its position in CBOT soybean meal futures below the soybean meal all-months position limit.

IV.

LEGAL DISCUSSION

Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2012), provides 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.

Commission Regulation 150.2 establishes speculative position limits in certain futures contracts, 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 6,500 all-months speculative position limit in CBOT soybean meal. 17 C.F.R. § 150.2 (2013).

By exceeding the limits fixed by Commission Regulation 150.2, Respondent violated Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2012) and Commission Regulation 150.2, 17 C.F.R. § 150.2 (2013). 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 Chicago Mercantile Exchange Rule 8032.E) (citing *Hunt*, 591 F.2d at 1218).

V.

FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that MSCGI violated Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2012) and Commission Regulation 150.2, 17 C.F.R. § 150.2 (2013).

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 (2013), 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, 7 U.S.C. § 6a(b)(2) (2012) and Commission Regulation 150.2, 17 C.F.R. § 150.2 (2013);
2. orders Respondent to cease and desist from violating Section 4a(b)(2) of the Act, 7 U.S.C. § 6a(b)(2) (2012) and Commission Regulation 150.2, 17 C.F.R. § 150.2 (2013);
3. orders Respondent to pay a civil monetary penalty in the amount of two hundred thousand dollars (\$200,000), plus post-judgment interest, if the civil monetary penalty is not paid within ten (10) days of the entry of this Order; 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, 7 U.S.C. § 6a(b)(2) (2012) and Commission Regulation 150.2, 17 C.F.R. § 150.2 (2013).
- B. Respondent shall pay a civil monetary penalty of two hundred thousand dollars (\$200,000), plus post-judgment interest if the civil monetary penalty is not paid within ten (10) days of the date of entry of this Order (the "CMP Obligation"). If the civil monetary penalty is not paid within ten (10) days, of the date of the entry of this Order, then 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 (2012). 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 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 Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005.

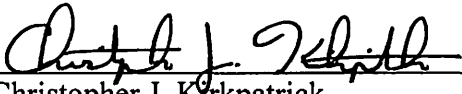
- C. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to 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.

- D. Partial Satisfaction: Respondent understands that any acceptance by the Commission of partial payment of Respondent's CMP 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.



Christopher J. Kirkpatrick
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: March 24, 2014