# UNITED STATES OF AMERICA Before the COMMODITY FUTURES TRADING COMMISSION

Office of Proceedings
Proceedings Clerk
10:29 am, Jan 02, 2014

In the Matter of:		
Artem Obolensky,	) )	
Respondent.	) )	

## 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 October 13, 2011, Artem Obolensky ("Obolensky" or "Respondent") violated Section 6(c)(2) of the Commodity Exchange Act, as amended ("CEA" or "Act"), 7 U.S.C. § 9(2) (Supp. V 2011). 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. <sup>1</sup>

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 this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

The Commission finds the following:

## A. <u>SUMMARY</u>

Commission staff interviewed Obolensky on October 13, 2011 in connection with an investigation as to whether a foreign bank ("Bank") and another foreign entity ("Entity A") had engaged in non-competitive and pre-arranged commodity futures and options trades in March 2012 Japanese Yen contracts on the Chicago Mercantile Exchange ("CME"), in violation of the Act, 7 U.S.C. §§ 1 et. seq. (2012), and Commission Regulations, 17 C.F.R. §§ 1.1 et seq. (2013). During that interview, Obolensky knowingly made false and misleading statements to Commission staff, in violation of Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (Supp. V 2011).

## B. RESPONDENT

Artem Obolensky is a foreign national who resides in Moscow, Russia. He is currently President of the Bank and has been employed by the Bank since 2003. The Bank is a full-service Russian bank that traded foreign currency futures and options on the CME through proprietary trading accounts carried at at least four registered futures commission merchants ("FCMs"). Obolensky also is a co-owner of Entity A, a private investment fund organized in Cyprus, which was established in 2004 and is operated by a small number of the Bank's employees. Entity A traded on the CME through an account carried at a different FCM. Obolensky was listed as the person to contact and/or as an authorized trader for the Bank's and Entity A's futures accounts. He has never been registered with the Commission in any capacity.

## C. FACTS

On October 13, 2011, the CFTC conducted an interview of Obolensky. During the interview, CFTC staff questioned Obolensky regarding a trade in March 2012 Japanese Yen call options contracts with a 1000 strike price between the Bank and Entity A that occurred on April 15, 2011. When asked about the trade, Obolensky said:

The two entities pursue different strategies. Pure coincidence that the trades crossed. The strategies of [Entity A] and [the Bank] were completely opposing. The Bank was viewing the situation differently from the strategy of [Entity A]. The Bank placed the trade into the market, the trade wasn't executed and so [Entity A] picked up the trade. [The Bank] was right and the Bank made the money on the trade. There was no bad intent. Very isolated when viewed in the context of all of the trades the Bank has placed in markets over the years.

Contrary to Obolensky's statements, the CFTC later discovered that the Bank and Entity A traded opposite each other more than 182 times between May 2010 and June 2011 and modified their orders repeatedly during that time to ensure that their orders would match. Moreover, Obolensky made the trading decisions for both parties at the time, and knew that they were doing this. Thus, Obolensky's characterization of the April 15, 2011 transaction as "[v]ery isolated when viewed in the context of all of the trades the Bank has placed in markets over the years," was false.

Additionally, the March 2012 Japanese Yen call option trade on April 15, 2011 that CFTC staff questioned Obolensky about was clearly not the result of "a pure coincidence," as

demonstrated by the Bank's and Entity A's order activity. Specifically, the March 2012 Japanese Yen options contract represented a deferred month contract that was relatively illiquid. Although the contract can be traded in the pit, Entity A and the Bank waited until after the pit trading had closed for the day. Then, between 14:06:45 and 14:07:19, Entity A entered three bids to purchase March 2012 Japanese Yen call options at a strike price of 1000 at descending prices in the CME's Globex electronic order platform. The Globex system rejected the first two bids because the bid prices were higher than the upper price limit set by Globex for March 2012 Yen options contracts on April 15, 2011. Entity A's third bid, at 2130, was accepted by the system, but was not matched. At 14:10:02, the Bank modified an existing offer to sell 100 March 2012 Japanese Yen call options contracts at 2380 down to a price of 2170. Entity A then entered an order modifying its bid from 2130 up to 2170 in order to hit the Bank's offer. However, Globex again rejected Entity A's bid for being higher than Globex's price limit for these Yen contracts. Subsequently, starting at 14:13:36.033, Entity A entered and canceled a successive series of rising bids to increase Globex's price limit. Entity A first entered a bid at a price of 2150, which Globex accepted. Entity A then canceled its bid at 2150 and replaced it with a higher bid of 2155. Once Globex accepted that bid Entity A again canceled it and replaced it with a higher bid. Entity A repeated this bid and cancel activity until the Globex price limit for bids had expanded to 2170. At that point, Globex matched and executed Entity A's one lot bid at 2170 opposite the Bank's resting offer to sell 100 contracts. Twenty seconds later, Entity A entered a new bid to purchase 99 contracts at 2170, which Globex matched and executed opposite the remaining 99 contracts from the Bank's resting offer. These were the only trades executed on Globex in March 2012 Japanese Yen call options contracts with a strike price of 1000 on April 15, 2011.

The timing of the above described trade and the illiquidity of the far month Japanese Yen options contracts involved evidences that it was not a "pure coincidence" as Obolensky stated in his interview with the CFTC. As a result, it was false and misleading for Obolensky to tell Commission staff that the trade was a "pure coincidence" resulting from different strategies employed by the Bank and Entity A.

## IV.

#### **LEGAL DISCUSSION**

Section 6(c)(2) of the Act, 7 U.S.C. §9(2) (Supp. V 2011), provides that it is unlawful "for any person to make any false or misleading statement of a material fact to the Commission ... or to omit to state in any such statement any material fact that is necessary to make any statement of material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading." During his interview with the CFTC on October 13, 2011, Obolensky made false and/or misleading statements regarding why and how often the Bank and Entity A traded opposite each other. Obolensky knew that these statements were false and/or misleading, and that they were material because they went to the heart of the CFTC's investigation into non-competitive and pre-arranged trading on the part of the Bank and Entity A.

V.

## FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Obolensky violated Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (Supp. V 2011).

VI.

## OFFER OF SETTLEMENT

Respondent has submitted the Offer in which he, 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 he 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;
  - any and all claims that he 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 6(c)(2) of the Act, 7 U.S.C. § 9(2) (Supp. V 2011);
  - 2. orders Respondent to cease and desist from violating Section 6(c)(2) of the Act, 7 U.S.C. § 9(2) (Supp. V 2011);
  - 3. orders Respondent to pay a civil monetary penalty in the amount of two hundred and fifty thousand dollars (\$250,000) plus post-judgment interest; and
  - 4. orders Respondent to comply with the conditions and undertakings consented to in the Offer and as 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 6(c)(2) of the Act, 7 U.S.C. § 9(2) (Supp. V 2011);
- B. Respondent shall pay a civil monetary penalty in the amount of two hundred and fifty thousand dollars (\$250,000) within ten (10) days of the date of entry of this Order (the "CMP Obligation"). If the CMP obligation is not paid in full within ten (10) days 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 the 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 Susan Gradman, Commodity Futures Trading Commission, 525 West Monroe Street, Suite 1100, Chicago, Illinois 60661;

- C. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
  - 1. Public Statements: Respondent agrees that neither he nor any of his agents or employees under his 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 shall undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.
  - 2. <u>Cooperation with the Commission:</u> Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.
  - 3. <u>Partial Satisfaction:</u> Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent's CMP Obligation shall not be deemed a waiver of his 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.
  - 4. <u>Change of Address/Phone:</u> Until such time as Respondent satisfies in full his CMP Obligation as set forth in this Consent Order, Respondent shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

The provisions of this Order shall be effective as of this date.

By the Commission.

Melissa D. Jurgens/

Secretary of the Commission

Commodity Futures Trading Commission

Dated: January 2, 2014