

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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 OFFICE OF PROCEEDINGS
 & ADMINISTRATIVE SERVICES
 COMMODITY FUTURES TRADING COMMISSION

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In the Matter of)	
)	
SHELL TRADING US COMPANY,)	CFTC Docket 06- 02
SHELL INTERNATIONAL)	
TRADING AND SHIPPING CO., and)	ORDER INSTITUTING PROCEEDINGS
NIGEL CATTERALL)	PURSUANT TO SECTIONS 6(c) AND 6(d)
)	OF THE COMMODITY EXCHANGE
)	ACT, MAKING FINDINGS AND
Respondents)	IMPOSING REMEDIAL SANCTIONS
)	
)	

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Shell Trading US Company (“STUSCO”), Shell International Trading and Shipping Co. (“STASCO”), and Nigel Catterall (“Catterall”) (collectively “Respondents”) have violated Section 4c(a) of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. § 6c(a)(2002), and Commission Regulation 1.38(a), 17 C.F.R. § 1.38(a). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondents have submitted Offers of Settlement (the “Offers”), which the Commission has determined to accept. Without admitting or denying the findings of fact herein, Respondents consent to the entry of this Order, and acknowledge service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”). Respondents consent to the use by the Commission of the findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Respondents do not consent to the use of the Offers or the findings in this Order as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents consent to the use of the Offers or this Order, or the findings consented to in the Offers or this

III.

A. SUMMARY

On at least five occasions between November 2003 and March 2004, traders for STASCO and STUSCO prearranged and executed non-competitive futures trades in crude oil on the New York Mercantile Exchange ("NYMEX"). In each instance, the traders prearranged the trade by agreeing on the quantity and the settlement month, and agreeing to take the opposite positions of the trade. There was no prearrangement as to price. The traders then placed the trades with a NYMEX floor brokerage company, which then executed the trades.

The prearranged trades by the traders of STASCO and STUSCO, including Catterall, who was the chief trader on behalf of STUSCO, constituted fictitious sales in violation of Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2002). Furthermore, by executing prearranged orders to buy and sell futures in crude oil, STASCO's and STUSCO's traders also engaged in noncompetitive transactions in violation of Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2004). Because the STASCO and STUSCO traders undertook their actions within the scope of their employment, STASCO and STUSCO are liable for their respective traders' violations of Section 4c(a) of the Act and Regulation 1.38(a), pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002).

The Commission acknowledges the cooperation of STUSCO and STASCO during the investigation of this matter.

B. RESPONDENTS

Shell Trading US Company is a Delaware corporation with its principal place of business in Houston, Texas. STUSCO's ultimate parent company is Royal Dutch Shell plc. STUSCO has been a member of the NYMEX since November 8, 2002, but has never been registered with the Commission.

Shell International Trading and Shipping Co. is a United Kingdom corporation with its principal place of business in London, UK. STASCO's ultimate parent company is Royal Dutch Shell plc. STASCO has never been registered with the Commission.

Nigel Catterall resides in Sugar Land, Texas, and is the head of the Futures desk at STUSCO. Until September 2003 he was a trader at STASCO's futures desk. Catterall has never been registered with the Commission.

Order, by any party in any other proceeding. The findings made in this Order are not binding on any other person or entity named as a defendant or respondent in any other proceeding.

C. FACTS

Respondents Prearranged And Executed Non-Competitive Trades On The NYMEX

On at least five occasions between November 2003 and March 2004, traders for STUSCO and STASCO prearranged noncompetitive futures orders in crude oil that were placed and executed on the NYMEX. On each occasion, prior to the orders' being placed on the NYMEX, traders for STUSCO and traders for STASCO had telephone conversations with one another to discuss the specific quantity and delivery month of the orders. STUSCO and STASCO agreed that one would buy and the other would sell the specified quantity and delivery month. Subsequently, the traders contacted a floor brokerage company, which executed the trades.

For example, on January 19, 2004, Catterall, on behalf of STUSCO, and traders from STASCO prearranged and executed an order whereby STUSCO sold and STASCO bought crude oil futures. In pre-trade conversations between the STUSCO and STASCO traders, both traders reviewed their respective companies' positions before the NYMEX opening, and agreed on the volume of crude oil futures that STUSCO would sell and STASCO would buy. No prearrangement as to price occurred. Substantially similar conduct occurred on at least four other occasions, two of which involved Catterall.

D. LEGAL DISCUSSION

a. Respondents Entered into Prearranged Trades

STUSCO and STASCO entered into five prearranged trades, three of which involved Catterall, which are fictitious and non competitive trades under the Act and Regulations promulgated thereunder.

1. Respondents Thereby Entered into Fictitious Sales in Violation of Section 4c(a) of the Act

Section 4c(a) of the Act makes it unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction that is a fictitious sale. *In re Gimbel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,213 at 35,003 (CFTC Apr. 14, 1988), *aff'd as to liability*, 872 F.2d 196 (7th Cir. 1989). By enacting Section 4c(a), Congress sought to "ensure that all trades are focused in the centralized marketplace to participate in the competitive determination of the price of the futures contracts." *S. Rep. No. 93-1131, 93d Cong., 2d Sess. 16-17 (1974)*; see also *Merrill Lynch Futures, Inc. v. Kelly*, 585 F. Supp. 1245, 1251 n.3 (S.D.N.Y. 1984) (Section 4c(a)(A) was generally intended to prevent collusive trades conducted away from the pits). As a result, Section 4c(a) broadly prohibits fictitious trades intended to avoid the risks and price competition of the open market.

Although Section 4c(a) of the Act prohibits fictitious sales, the term is not defined in the Act. *In re Thomas Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,742 (CFTC Dec. 10, 1997); *In re Harold Collins*, [1986-1987 Transfer Binder] Comm. Fut.

L. Rep. (CCH) ¶ 22,982 at 31,903 (CFTC Apr. 4, 1986). A fictitious sale is a general category that includes, at a minimum, the unlawful practices specifically enumerated in Section 4c(a), as well as prearranged trading. *Id.*; *In re Gimbel*, ¶ 24,213 at 35,003. The central characteristic of the general category of fictitious sales is the use of trading techniques that give the appearance of submitting trades to the open market while negating the risk or price competition incident to such a market. *In re Fisher*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,725 at 56,052 n.11 (CFTC Mar. 24, 2004); *Thomas Collins*, ¶ 27,194 at 45,742; *Harold Collins*, ¶ 22,982 at 31,902.

The Commission has long held that prearranged trading is a form of fictitious sales. *Harold Collins*, ¶ 22,982 at 31,903. By determining trade information such as price and quantity outside the pit, and then using the market mechanism to shield the private nature of the bargain from public scrutiny, both price competition and market risk are eliminated. *Id.*

In this case, the various telephone conversations between the STASCO and STUSCO traders, including Catterall, pertaining to the specific quantity and delivery month of the contracts to be traded prior to the submission of the orders and the execution of the trades, and agreeing to take the opposite positions in the trades, establish that the resulting trades were prearranged, and thus fictitious sales. Consequently, the traders of STASCO and STUSCO, including Catterall, violated Section 4c(a), which makes it unlawful to offer to enter into, or to enter into, any commodity futures transaction that is a fictitious sale.

STUSCO and STASCO are liable for the violations of the traders they employed. Under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B)(2002), and Section 1.2 of the Commission's Regulations, 17 C.F.R. § 1.2 (2004), the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation or trust. "[I]t does not matter if the principal participated in or even knew about the agent's acts; he is strictly liable for them." *Stotler and Co. v. CFTC*, 855 F.2d 1288, 1292 (7th Cir. 1988) (citing *Cange v. Stotler*, 826 F.2d 581, 589 (7th Cir. 1987)). As the traders, including Catterall, were each acting within the scope of their employment, STUSCO and STASCO are liable for their respective traders' violations of the Act.

2. Respondents Thereby Also Executed Noncompetitive Trades in Violation of Commission Regulation 1.38(a)

Commission Regulation 1.38(a) requires that all purchases and sales of commodity futures be executed "openly and competitively." The purpose of this requirement is to ensure that all trades are executed at competitive prices and directed into a centralized marketplace to participate in the competitive determination of the price of futures contracts. Noncompetitive trades are generally transacted in accordance with express or implied agreements or understandings between and among the traders. *Gilchrist*, ¶ 24,993 at 37,652. Noncompetitive trades are also a type of fictitious sale, because they negate the risk incidental to an open and competitive market. *Fisher*, ¶ 29,725 at 56,052 n. 11. Trades can be noncompetitive even though they are executed in the pit. *In re Buckwalter*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,683 (CFTC Jan. 25, 1991) (citing *Laiken v. Dep't of Agriculture*,

345 F.2d 784, 785 (2d Cir. 1965)). Prearranged trading is a form of anti-competitive trading that violates Commission Regulation 1.38(a). *Gimbel*, ¶ 24,213 at 35,003.

By entering into prearranged noncompetitive trades, STASCO and STUSCO traders, including Catterall, violated Commission Regulation 1.38(a).

Pursuant to Section 2(a)(1)(B) of the Act, STUSCO and STASCO are liable for these violations.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that STUSCO, STASCO and Catterall violated Section 4c(a) of the Commodity Exchange Act, as amended, 7 U.S.C. § 6c(a), and Section 1.38(a) of the Commission's Regulations, 17 C.F.R. § 1.38(a).

V.

OFFERS OF SETTLEMENT

Respondents have submitted Offers in which each, without admitting or denying the findings herein:

(A) acknowledges service of the Order;

(B) admits the jurisdiction of the Commission to all the matters set forth herein;

(C) waives the filing and service of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, any and all claims which he/it possesses under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and the rules promulgated by the Commission in conformity therewith, Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2004), relating to or arising from this action, any right under the Equal Access to Justice Act to seek costs, fees, or other expenses relating to or arising from this proceeding, and any claim of Double Jeopardy based upon the institution of this proceeding or the entry of any order imposing a civil monetary penalty or any other relief;

(D) stipulates that the record basis on which the Order may be entered consists solely of the Order and the findings in the Order consented to in the Offer; and

(E) consents to the entry of the Order, which

- (1) makes findings that STUSCO, STASCO and Catterall violated Section 4c(a) of the Act and Section 1.38(a) of the Regulations;
- (2) orders Respondents to cease and desist from violating Section 4c(a) of the Act and Section 1.38(a) of the Regulations, that they have been found to have violated;
- (3) imposes a civil monetary penalty upon STASCO of \$200,000 and upon Catterall of \$100,000; and
- (4) orders Respondents to comply with the undertakings consented to in their respective Offers.

Upon consideration, the Commission has determined to accept the three Offers.

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. STUSCO, STASCO and Catterall shall each cease and desist from violating Section 4c(a) of the Act and Section 1.38(a) of the Regulations;
2. STASCO shall pay a civil monetary penalty of Two Hundred Thousand Dollars (\$200,000) and Catterall shall pay a civil monetary penalty of One Hundred Thousand Dollars (\$100,000) within ten (10) business days of the date of the Order. STASCO and Catterall shall make payments by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the Commodity Futures Trading Commission, and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Respondent and the name and docket number of this proceeding. STASCO and Catterall shall simultaneously transmit a copy of the cover letter and of the form of payment to Gregory G. Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if any Respondent fails to pay the full amount within fifteen (15) days of the due date, such Respondent shall be automatically prohibited from the privileges of all registered entities until such Respondent shows to the satisfaction of the Commission that payment of the full amount with interest thereon to the date of payment has been made; and
3. Respondents shall comply with the following conditions and undertakings, as specified:

(a) Future Cooperation With the Commission


Respondents shall continue to cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement (the "Division") in this proceeding, and in any civil or criminal investigation, litigation, or administrative or self-regulatory matter related to the subject matter of this proceeding. As part of such cooperation with the Commission, Respondents agree to:

- (1) preserve all records which have been previously identified by Respondents to the staff of the Commission as relevant to the subject matter of this proceeding (including records copies of which have been previously provided to the staff of the Commission in connection with the investigation that led to this proceeding), including but not limited to audio files, e-mails, and trading records for a period of five years from the date of this Order;
- (2) comply fully, promptly, completely, and truthfully with any inquiries or requests for information or documents;
- (3) provide authentication of documents and other evidentiary material;
- (4) produce any current (as of the time of the request) officer, director, employee, or agent of Respondents, regardless of the individual's location and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation; and
- (5) assist in locating and contacting any prior (as of the time of the request) officer, director, employee or agent of Respondents.

(b) Public Statements

By neither admitting nor denying the findings made in this Order, Respondents agree that neither they nor any of Respondents' agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order or creating, or tending to create, the impression that the Order is without factual or legal basis; provided, however, that nothing in this provision shall affect Respondents' (i) testimonial obligations; or (ii) right to take factual or legal positions in other proceedings to which the Commission is not a party. Respondents will undertake all steps necessary to assure that all of their agents and employees under their authority or control understand and comply with this agreement.

By the Commission.



Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission

Dated: January 4, 2006