

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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U.S. Commodity Futures Trading Commission,

Plaintiff,

v.

Supama International DMCC,  
Naresh Kumar Jain,  
Aaristo Commodities and Futures DMCC,  
Kanta Nath Jain, and  
Hainke & Anderson Trading LLC,  
Defendants.

07 CV 2770 (RJH)

ECF Case

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**CONSENT ORDER OF PERMANENT INJUNCTION,  
CIVIL MONETARY PENALTY, AND OTHER EQUITABLE RELIEF  
AGAINST DEFENDANT SUPAMA INTERNATIONAL DMCC**

On April 5, 2007, Plaintiff, U.S. Commodity Futures Trading Commission ("Commission"), filed a Complaint against Supama International DMCC ("Supama"), Naresh Kumar Jain, Aaristo Commodities and Futures DMCC, Kanta Nath Jain, and Hainke & Anderson Trading LLC (collectively, "Defendants") seeking injunctive and other equitable relief for violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 et seq. (2002), and the Commission Regulations ("Regulations") promulgated thereunder, 17 C.F.R. §§ 1 et seq. (2006). The Court entered an *ex parte* statutory restraining order on April 5, 2007 that, among other things, froze all assets held by Defendants at Man Financial Inc and ordered the maintenance of and access to business records. On May 3, 2007, the Court entered a consent order of preliminary injunction against Supama.

**I. CONSENTS AND AGREEMENTS**

To effect settlement of the matters alleged in the Complaint against Supama without a trial on the merits or any further judicial proceedings, Supama:

1. Consents to the entry of this Consent Order of Permanent Injunction, Civil Monetary Penalty, and Other Equitable Relief against Supama International DMCC ("Order").

2. Affirms that Supama has read this Order and agrees to this Order voluntarily and that no promises or threats have been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.

3. Acknowledges service of the Summons and Complaint.

4. Admits that this Court has jurisdiction over Supama, admits that this Court has subject matter jurisdiction over this action, and admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

5. Waives:

a. all claims that Supama may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000) and Part 148 of the Regulations, 17 C.F.R. § 148.1, *et seq.* (2006), relating to, or arising from, this action;

b. any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and

c. all rights of appeal in this action.

6. Does not consent to the use of this Order in any other proceedings other than those to which the Commission is a party. However, no provision of this Order shall in any way limit or impair the ability of any person, including third-party beneficiaries, to seek any legal or

equitable remedy against Supama or any other person in any other proceeding, including any current or subsequent bankruptcy proceeding.

7. By consenting to the entry of this Order, Supama neither admits nor denies the allegations of the Complaint or the Findings of Fact and Conclusions of Law contained in this Order, except as to jurisdiction and venue, which Supama admits. Supama does not consent to the use of this Order, or the Findings of Fact and Conclusions of Law, as the sole basis for any other proceeding brought by or involving the Commission, other than in a proceeding (i) in bankruptcy relating to Supama, or (ii) to enforce the terms of this Order. Solely with respect to any such proceeding in bankruptcy or to enforce the terms of this Order, Supama agrees that the allegations of the Complaint and the Findings of Fact and Conclusions of Law in this Order shall be taken as true and be given preclusive effect without further proof. Furthermore, Supama shall also provide immediate notice to this Court and to the Commission by certified mail of any bankruptcy proceeding filed by, on behalf of, or against Supama, and of any change of address.

8. Agrees that neither Supama nor any of its agents or employees acting under its authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation of the Complaint or findings of fact or conclusions of law in this Order, or creating, or tending to create, the impression that the Complaint or this Order is without a factual basis; provided, however, that nothing in this provision shall affect Supama's (i) testimonial obligations; or (ii) right to take legal, factual or equitable positions in other proceedings to which the Commission is not a party. Supama shall take all necessary steps to ensure that all of its agents, servants, employees, contractors, representatives under its authority or control, and attorneys understand and comply with this agreement.

9. Consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this case.

10. The Court, being fully advised of the facts, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court, therefore, directs the entry of findings of fact, conclusions of law, a permanent injunction and ancillary equitable relief pursuant to § 6c of the Act, 7 U.S.C. § 13 a-1 (2002), as set forth herein.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. Findings of Fact**

1. The Commission is an independent federal regulatory agency charged with the responsibility of administering and enforcing the provisions of the Act and Regulations promulgated thereunder.

2. Supama is a United Arab Emirates corporation with offices located at 104, 113-226, Al Shamal, Dubai, United Arab Emirates 46351. Rajesh Kothari and Ketan Kothari are Directors and Mukesh Kothari is Vice President of Supama.

3. On several trading days in March 2007, an employee of Supama engaged in a series of copper, gold, crude oil, and natural gas futures transactions offered by the New York Mercantile Exchange (“NYMEX”) on the Chicago Mercantile Exchange Globex electronic trading platform (“Globex”) whereby such Supama employee traded in illiquid, distant contracts opposite others at off-the-market prices so that the effect was no net change in open positions of Supama but a resulting profit to Supama and a loss to the counterparty – a money pass among Supama’s and its counterparty’s accounts.

4. Specifically, on at least three trading days in March 2007, Supama and Naresh Kumar Jain (“Naresh”) engaged in a series of futures transactions offered by NYMEX on Globex

whereby Supama repeatedly traded opposite Naresh, resulting in \$164,680 in profits to Supama's accounts and the same amount of losses to Naresh's accounts.

5. Supama's said employee and Naresh engaged in the following pattern of trading activity repeatedly: Supama bought commodity futures contracts at low prices from Naresh and immediately sold them back to Naresh at higher prices.

6. In each series of offsetting transactions, Supama profited and Naresh incurred a loss with no change in open positions held by Supama and Naresh.

7. Over the course of these trading days, Supama profited by approximately \$164,680, and Naresh lost approximately \$164,680.

8. Supama and Naresh did not execute these transactions in accordance with the written rules of NYMEX.

9. The transactions described herein involved back-month, illiquid contracts fast-matched at off-the-market prices during an unusual time of day and resulted in the transfer of thousands of dollars among Supama's and Naresh's trading accounts with no ultimate change in their trading positions.

#### **B. Conclusions of Law**

1. With the aforementioned practices, Supama violated Section 4c(a) of the Act, 7 U.S.C. 6c(a) (2002), by entering into a transaction that is, is of the character of, or is commonly known to the trade as, a 'wash sale' or 'accommodation trade,' or is a fictitious sale, involving the purchase or sale of a commodity for future delivery, which transaction was used or may have been used to: hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity; or to determine the price basis of any such transaction in interstate

commerce in the commodity; or to deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

2. With the aforementioned practices, Supama further violated Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2006), by engaging in a series of improper noncompetitive commodity futures transactions.

3. This Court has subject matter jurisdiction over this action and the allegations in the Complaint pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

4. This Court has personal jurisdiction over Supama pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

5. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).

6. There is good cause for entry of an order permanently enjoining Supama from engaging in future violations of the Act and Regulations, requiring Supama to pay a civil monetary penalty in the amount of \$164,680, and for the other equitable relief stated in this Order.

### **III. ORDER FOR PERMANENT INJUNCTION**

#### **IT IS THEREFORE ORDERED THAT:**

1. Supama is permanently restrained, enjoined and prohibited from directly or indirectly:

- a. Offering to enter into, entering into, or confirming the execution of a transaction that is, is of the character of, or is commonly known to the trade as, a 'wash sale' or 'accommodation trade'; or is a fictitious sale; or is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price, when such transaction involves the purchase or sale of a commodity for future delivery (or any option on such a transaction or option on a commodity) if the transaction is used or may be used to—



- (A) hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity;
- (B) determine the price basis of any such transaction in interstate commerce in the commodity; or
- (C) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction

in violation of Section 4c(a) of the Act, 7 U.S.C. 6c(a) (2002); and/or

- b. Entering into transactions to buy and sell any commodity for future delivery, or any commodity option, on or subject to the rules of a contract market where the execution is not open and competitive by open outcry or posting of bids and offers or by equally open and competitive methods, in the trading pit or ring or similar place provided by the contract market for trading in such commodity or commodity option, unless such transactions are executed noncompetitively in accordance with written rules of the contract market which have been submitted to and approved by the Commission, specifically providing for the noncompetitive execution of such transactions, in violation of Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2006).

The injunctive provisions of this Order shall be binding on Supama, upon any person insofar as he or she is acting in the capacity of officer, agent, servant, employee or attorney of Supama, and upon any person who receives actual notice of this Order by personal service, facsimile or otherwise insofar as he or she is acting in active concert or participation with Supama.

**IV. ORDER FOR CIVIL MONETARY PENALTY AND OTHER EQUITABLE RELIEF**

**IT IS FURTHER ORDERED THAT:**

- 1. Civil Monetary Penalty: Supama shall pay a civil monetary penalty of \$164,680, plus post-judgment interest. Post-judgment interest shall accrue 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. Supama shall pay this civil monetary penalty 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, Supama shall make the payment payable to the U.S. Commodity Futures Trading Commission, and send to the following address:

U.S. Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Marie Bateman - AMZ-300  
DOT/FAA/MMAC  
6500 S. Macarthur Blvd.  
Oklahoma City, OK 73169  
Telephone: 405-954-6569

If the payment is to be made by electronic funds transfer, Supama shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Supama shall accompany the payment of the penalty with the cover of a letter that identifies Supama and the name and docket number of this proceeding. Supama shall simultaneously transmit copies of the cover letter and the form of payment to (1) Regional Counsel, U.S. Commodity Futures Trading Commission, Eastern Regional Office, 140 Broadway, 19<sup>th</sup> Floor, New York, NY 10005 and (2) Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581.

2. Undertaking: Supama shall comply with the following undertaking, which in no way shall substitute for any other requirements or internal procedures currently in place, to ensure compliance with the Act, Regulations, and/or rules of the Exchanges designated by the Commission as Contract Markets and Derivatives Clearing Organizations Registered with the Commission: To the extent that it has not already done so, Supama shall implement a compliance system to ensure the following:

- a. Supama's current and future officers, principals, employees, and agents are aware and have an understanding of relevant provisions of the Act, Regulations, and/or rules of the Exchanges designated by the Commission as Contract Markets and Derivatives Clearing Organizations Registered with the Commission;



- b. Implementation of improved internal controls relating to trading in any commodity, as that term is defined in Section 1a(4) of the Act, 7 U.S.C. § 1a(4) (“commodity interest”);
- c. Background information on all persons who use Supama’s trading platforms to conduct transactions in commodity interests, including biographical information and the purported source of funds used by such persons to engage in or secure such trading, shall be obtained and maintained;
- d. Only Supama’s trained officers, principals, employees, and agents shall have the authority and ability to conduct transactions in commodity interests on Supama’s behalf and/or in Supama’s accounts;
- e. Supama shall monitor periodically transactions in commodity interests made on Supama’s behalf and/or in Supama’s accounts, promptly detect when transactions in commodity interests made on Supama’s behalf and/or in Supama’s accounts are conducted by someone without the express authority to conduct such transactions and immediately terminate such unauthorized transactions;
- f. Supama shall promptly report to the Commission any suspicious trading activity relating to transactions in commodity interests, including those of a nature illustrated in Paragraph IV.2.e, above;
- g. Transactions in commodity interests made on Supama’s behalf and/or in Supama’s accounts are executed openly and competitively;
- h. Transactions in commodity interests made on Supama’s behalf and/or in Supama’s accounts are in compliance with all relevant provisions of the Act, Regulations, and/or rules of the Exchanges designated by the Commission as Contract Markets and Derivatives Clearing Organizations Registered with the Commission.

3. Partial Payments: Any acceptance by the Commission of partial payment of Supama’s civil monetary penalty obligation shall not be deemed a waiver of Supama’s requirement 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. Notices: All notices required to be given by any provision in this Order shall be sent by certified mail, return receipt requested, addressed as follows:

Notice to Commission:

Regional Counsel  
Division of Enforcement – Eastern Regional Office  
U.S. Commodity Futures Trading Commission  
140 Broadway, 19<sup>th</sup> Floor  
New York, NY 10005

Notice to Defendant:

Supama International DMCC  
c/o Kenneth B. Falk, Esq.  
Jaffe & Falk, LLC  
843 Rahway Avenue  
Woodbridge, NJ 07095

5. Entire Agreement and Amendments: This Order incorporates all of the terms and conditions of the settlement between the Commission and Supama. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

6. Successors and Assigns: This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries, and administrators.

7. Authority: Rajesh Kothari hereby warrants that he is Director of Supama and that this Order has been duly authorized by Supama and he has been duly empowered to sign and submit it on behalf of Supama.

8. Partial Lifting of Freeze: Notwithstanding any order entered in this proceeding freezing Supama's assets and/or prohibiting Supama's transfer of funds or other property, Supama shall be permitted to use such assets, funds, or property to satisfy its civil monetary penalty obligation as set forth in Part IV.1, above.

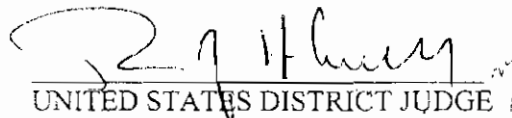
9. Lifting of Freeze: Upon full satisfaction by Supama of its civil monetary penalty obligation as set forth in Part IV.1, above, any order entered in this proceeding freezing Supama's assets and/or prohibiting Supama's transfer of funds or other property shall terminate and come to an end.

10. This Order shall remain in effect until further order of the Court, and the Court shall retain jurisdiction over this action to ensure compliance with this Order and for all other purposes related to this action.

11. There being no just cause for delay, the Clerk of the Court shall enter judgment against Supama forthwith and without further notice.

**IT IS SO ORDERED.**

Dated: 1/7/08

  
UNITED STATES DISTRICT JUDGE