UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

In the Matter of	**CFTC Docket No.** 05-01
John Hucko,	**ORDER INSTITUTING PROCEEDINGS AND MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS**
Respondent.	

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I.

The Commodity Futures Trading Commission (the "Commission") has reason to believe that John Hucko ("Hucko") has violated Section 4b(a)(2) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 6b(a) (2002). Therefore, the Commission deems it appropriate and in the public interest that, pursuant to 6(c) of the Act, public administrative proceedings be, and they hereby are, instituted to determine whether Hucko engaged in the violations set forth herein, and to determine whether an order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Hucko has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Without denying or admitting the findings of fact in this Order, Hucko acknowledges service of the Order, consents to the use of the findings in the Order in this proceeding and any other proceeding brought by the Commission or to which the Commission is a party.[1]

III.

A. Summary

Between October 2001 and May 2002, while he was employed at SMW Trading Company, Inc. ("SMW"), a registered futures commission merchant, Hucko engaged in a fraudulent trading scheme in which he assigned profitable trades to an SMW proprietary

[1] Hucko does not consent to the use of the Offer or this Order, or the findings to which he has consented in the Offer, 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, or with respect to registration issues. He does not consent to the use of the Offer or this Order, or the findings to which he has consented in the Offer, by any other 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 this or any other proceeding.

account he traded on behalf of SMW and assigned unprofitable trades to SMW proprietary accounts traded by other traders at SMW. SMW based Hucko's compensation during this period, in part, on his performance trading the proprietary account, and he engaged in the fraudulent trading scheme in an effort to overstate the profits in the proprietary account. During this time, Hucko hid at least $1.2 million in unprofitable trades from SMW by assigning them to proprietary accounts traded by others.

B. **Respondent**

John Hucko has never been registered with the Commission in any capacity. Hucko was employed by SMW from 1993 until 2003, when he resigned.

C. **Facts**

SMW maintains a proprietary trading program in which it employs traders to trade proprietary accounts that belong to SMW. SMW enters into arrangements with the traders in which SMW and the traders share in the profits generated by the account. The accounts implicated in this matter primarily traded options. From 1993 until 2001, SMW employed Hucko, first as a trader trainee and floor clerk and then as a "portfolio manager" in SMW's proprietary trading program.

As a portfolio manager, Hucko monitored trading activity in certain proprietary accounts to ensure that the traders remained within SMW's risk guidelines. To facilitate this activity, SMW gave Hucko access to trade on the Chicago Mercantile Exchange's GLOBEX electronic trading platform. Because of his role as a portfolio manager and his access to GLOBEX, some proprietary traders authorized Hucko, within prescribed limits, to place trades for the proprietary accounts he monitored. Generally, the trades that he ordered reduced an account's futures equivalent net long or short position and thus, its exposure to risk.

In March 2001, SMW agreed to let Hucko trade an SMW proprietary account and to share in the profits from the account. However, Hucko retained some responsibilities as a portfolio manager and GLOBEX terminal operator. By allowing Hucko to maintain multiple roles at the firm; trading for an account in which he had a financial interest while at the same time giving him access to the accounts being traded by the other traders, SMW inadvertently opened the door for Hucko to engage in his scheme. Beginning in October 2001, Hucko began a fraudulent trading scheme to overstate the profits in the proprietary account he traded. Essentially, Hucko engaged in a trade allocation scheme. If he made a profitable trade, he kept the trade for the proprietary account he traded. If he made an unprofitable trade, he transferred the trade to one of the other proprietary accounts.

Hucko's knowledge of SMW's systems and procedures, gained through years of experience, enabled him to hide the fraudulent trading from SMW and the other proprietary traders. SMW developed an in-house computer risk management system and reports to assist the proprietary option traders. Hucko took advantage of three features of

SMW's in-house risk management system to make it difficult for SMW and the proprietary option traders to detect his activities. First, the reports the system provided the option traders did not reflect trades in commodities other than the one designated for the account to trade. Thus, for example, if Hucko placed a trade in Eurodollars in an account that was authorized to trade S&Ps, the report would not reflect the trade. Hucko knew this and knew it would be very difficult for the traders to detect his trading in their accounts from the reports they routinely received. Second, GLOBEX trades had to be manually entered into the risk system.[2] That enabled Hucko to delay entering GLOBEX trades until he could select a time when he could enter them without being detected. Third, the system kept and reported a "volatility" number that the traders used to manage risk. However, SMW personnel, including Hucko, could manually change assumed volatility numbers in the system to raise or lower the apparent value of positions. Hucko periodically adjusted the volatility in the system to mask his activity.

Between October 2001 and May 2002, when SMW discovered the fraudulent trading scheme, Hucko hid at least $1.2 million in trading losses from SMW by assigning them to proprietary accounts traded by others.

D. Legal Discussion

Hucko's fraudulent trading scheme violated Section 4b(a) of the Act. Section 4b(a) makes it unlawful for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, made or to be made, for or on behalf of any other person if such contract is for future delivery, to cheat or defraud or attempt to cheat or defraud such other person. The unfair allocation of favorable executed trades to one account and assignment of unfavorable executed trades to another account violates Section 4b(a) of the Act. In re Shahrokh Nikkhah, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,460 at 47,202 (CFTC Nov. 5, 1998). Accordingly, Hucko violated Section 4b(a) of the Act by cheating and defrauding SMW.

IV.

OFFER OF SETTLEMENT

Hucko has submitted an Offer of Settlement in which he acknowledges service of this Order and admits the jurisdiction of the Commission with respect to the matters set forth in the Order and waives: (1) the service and filing of a complaint and notice of hearing; (2) a hearing and all post-hearing procedures; (3) judicial review by any court; (4) any objection to the staff's participation in the Commission's consideration of the Offer; (5) all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000) and part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, et seq. (2004), relating to, or arising from this action;

[2] SMW's back office system automatically entered pit trades into the risk system at the same time SMW sent them to the CME for clearing.

and (6) 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.

Hucko stipulates that the record basis on which the Order is entered consists of the Order and the findings in the Order consented to in the Offer. Hucko consents to the Commission's issuance of this Order, which makes findings as set forth herein and orders that Hucko: (1) cease and desist from violating the provisions of the Commission Regulations he has been found to have violated; (2) be permanently prohibited from trading on or subject to the rules of any registered entity, as that term is defined by Section 1(a)(29) of the Act, 7 U.S.C. § 1(a)(29) (2002), and that all such registered entities shall refuse Hucko trading privileges, beginning on the third Monday after the date of entry of this Order; (3) pay a civil monetary penalty in an amount of $50,000.00; and (4) comply with his undertakings as set forth in the Offer and incorporated in this Order.

V.

FINDING OF VIOLATIONS

Solely on the basis of Hucko's consent, as evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Hucko violated Section 4b(a) of the Act.

VI.

ORDER

Accordingly, **IT IS HEREBY ORDERED THAT:**

A. Hucko shall cease and desist from violating Section 4b(a) of the Act;

B. Hucko shall be permanently prohibited from trading on or subject to the rules of any registered entity, as that term is defined by Section 1(a)(29) of the Act, and all such registered entities shall refuse Hucko trading privileges, beginning on the third Monday after the date of entry of this Order;

C. Hucko shall pay a civil monetary penalty in the amount of $50,000.00 (FIFTY THOUSAND DOLLARS) 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 Hucko and the name and docket number of this proceeding within thirty (30) days of entry of this Order; and

D. Hucko shall comply with the following undertakings set forth in the Offer:

1. Hucko shall never apply for registration or seek exemption from registration with the Commission in any capacity, except as provided for in Section 4.14(a)(9) of the Regulations, 17 C.F.R. § 4.14(a)(9) (2004), and shall never engage in any activity requiring such registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Regulations, or act as a principal, officer agent or employee of any person registered with the Commission or required to be registered with the Commission, except as provided for in Section 4.14(a)(9) of the Regulations; this includes, but is not limited to soliciting, accepting or receiving funds, revenue or other property from any person, giving advice for compensation, or soliciting prospective customers, related to the purchase or sale of any commodity futures or option on commodity futures contacts; and

2. Neither Hucko, nor any of his agents or employees under his authority or control, shall take any action or make any public statements denying, directly or indirectly, any finding 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 Hucko's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party.

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

By the Commission:

Jean A Webb

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

Dated: October 26, 2004