

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of :
IZMIR MEHMEDOVIC, :
Respondent. :
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CFTC Docket No.

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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c), 6(d) AND
8a(4) OF THE COMMODITY EXCHANGE ACT AND MAKING FINDINGS AND
IMPOSING SANCTIONS**

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Izmir Mehmedovic (the "Respondent") has violated Section 4b(a)(1)(i) and (iii) of the Commodity Exchange Act, ("the Act"), as amended, 7 U.S.C. §§6b(a)(1)(i) and (iii) (2002). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether the 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 these administrative proceedings, the Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission accepts. Without admitting or denying the findings herein, the Respondent acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c), 6(d), and 8a(4) of the Act and Findings and Order Making Findings And Imposing Sanctions (the "Order"). The Respondent consents to the use of the findings contained in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ The Respondent does not consent to the use of this Offer or the findings in this Order, consented to in his Offer, as the sole basis for any other proceeding brought by the Commission, other than a proceeding brought to enforce the terms of this Order. The Respondent also does not consent to the use of his Offer or the findings in the Order by any other person or entity in this or in any other proceeding. The findings made in the Order are not binding on any other person or entity, including, but not limited to, any person or entity named as a defendant or respondent in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

On September 18, 2002, the Respondent engaged in at least one instance of trading ahead of an executable customer order in the crude oil ring of the New York Mercantile Exchange ("NYMEX"), and allocated the trade to his personal account, at a price better than that received by his customer, in violation of Section 4b(a)(1)(i) and (iii) of the Act, as amended, 7 U.S.C. §§6b(a)(1)(i) and (iii) (2002).

B. SETTLING RESPONDENT

Izmir Mehmedovic has been a member of NYMEX since September 2001 and has been registered with the Commission as a floor broker since September 4, 2001.

C. FACTS

On September 18, 2002, the Respondent, acting as a dual trader in the crude oil ring of NYMEX, knowingly or recklessly traded crude oil futures for his personal account, while holding an executable customer order in the same futures contract on the same side of the market. The trade for his personal account was at a price better than the trade that filled the executable customer order.

D. LEGAL DISCUSSION

The Respondent violated the Act by trading ahead of an executable customer order. Trading ahead violates Sections 4b(a)(1)(i) and (iii) of the Act. Under the Act, a broker has an obligation to act in the best interests of his customers.² A floor broker violates that duty when he chooses instead to act on behalf of himself (or someone other than his customer) to the disadvantage of his customer.³ Trading ahead occurs when a dual trading floor broker intentionally buys or sells for his own account while holding an executable customer order on the same side of the market.⁴

Under the Act, violations of §4b require a showing of scienter.⁵ Scienter is established

² *In re Murphy*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,798, at 31,351-52 (CFTC Sept. 25, 1985).

³ *In re Murphy*, ¶ 22,798 at 31,351-52.

⁴ *See In re Rousso*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,133, at 45,309 (CFTC Aug. 20, 1997), *aff'd*, 1998 U.S. App. LEXIS 22590 (2d Cir. 1998).

⁵ *In re Staryk*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,206, at 45,810 (CFTC Dec. 18, 1997). *See also Reddy v. CFTC*, 191 F.3d 109, 119 (2d Cir. 1999).

when a respondent commits a wrongful act intentionally or with reckless disregard.⁶ A reckless act is one where there is so little care that it is "very difficult to believe the [actor] was not aware of what he was doing."⁷ Scienter cannot be avoided by ignorance brought about by willfully or carelessly ignoring the truth.⁸ The Respondent had a duty to his customers to execute their orders in a manner where he would not personally profit at his customers' expense.

At the time Respondent traded for his personal account, he held an executable customer order in the same futures contract in which he traded personally. He then traded ahead of his customer. Further, Respondent acted with scienter because he knew or recklessly disregarded that he held an executable order at the time that he traded at a better price for himself. Therefore, Respondent violated Section 4b(a)(1)(i) and (iii) of the Act.

IV.

OFFER OF SETTLEMENT

The Respondent has submitted an Offer in which he, without admitting or denying the findings herein: (1) admits the jurisdiction of the Commission with respect to the matters set forth herein; (2) acknowledges service of the Order; (3) waives 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, all claims which he may possess 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 Regulations, 17 C.F.R. §§148.1-30 (2004), relating to or arising from this action, and any claim of Double Jeopardy based upon institution of this proceeding or the entry of any order imposing a civil monetary penalty or any other relief; (4) stipulates that the record basis on which the Order may be entered shall consist solely of the Order and findings in the Order consented to in his Offer; and (5) consents to the Commission's issuance of this Order, which makes findings as set forth herein and: (a) orders the Respondent to cease and desist from violating the provisions of the Act that he has been found to have violated; (b) imposes a ten thousand dollar (\$10,000) civil monetary penalty; (c) suspends Respondent's registration for three months; (d) bars the Respondent from trading commodity futures on his own account for a three month period and for his customers for an eighteen month period; and (e) orders Respondent to comply with his undertakings consented to in his Offer.

⁶ *Hammond v. Smith Barney, Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 (CFTC Mar. 1, 1990).

⁷ *Do v. Lind-Waldock & Co.*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,516, at 43,321 (CFTC Sept. 27, 1995); *Drexel Burnham Lambert, Inc. v. CFTC*, 850 F.2d 742, 748-49 (D.C. Cir. 1988).

⁸ *See CFTC v. Savage*, 611 F.2d 270, 283 (9th Cir. 1979); *see also Do v. Lind-Waldock & Co.*, ¶ 26,516, at 43,321 (an employee acted recklessly by failing to ascertain the status of an order prior to advising the customer that it was too late to cancel).

V.

FINDINGS OF VIOLATION

Solely on the basis of the consent evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Respondent violated Section 4b(a)(1)(i) and (iii) of the Act, 7 U.S.C. §§6b(a)(1)(i) and (iii) (2002).

VI.

ORDER

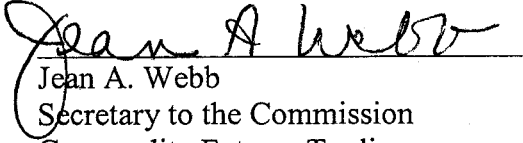
Accordingly, it is hereby ordered that:

1. The Respondent shall cease and desist from further violations of Section 4b(a)(1)(i) and (iii) of the Act, 7 U.S.C. §§6b(a)(1)(i) and (iii) (2002);
2. The Respondent shall pay a civil monetary penalty in the amount of ten thousand dollars (\$10,000) within ten (10) business days of the date of this Order;
3. The Respondent's registration is suspended for a period of three (3) months beginning on September 1, 2004 (the "Suspension Date");
4. The Respondent is prohibited, for a period of three (3) months beginning on the Suspension Date, from trading for himself, directly or indirectly, on or subject to the rules of any registered entity, and requiring all registered entities to refuse Respondent's trading privileges thereon. Respondent is further prohibited from trading for or on behalf of any other person for a period of eighteen (18) months beginning on the Suspension Date;
5. The Respondent acknowledges that failure to comply with this Order shall constitute a violation of the Order and may subject him to administrative or injunctive proceedings, pursuant to the Act; and
6. Respondent is directed to comply with his undertakings:
 - a. neither the Respondent nor any of his agents or employees 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 a factual basis; provided, however, that nothing in this provision affects the Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. The Respondent shall take all steps necessary to ensure that his agents or employees, if any, understand and comply with this undertaking;

- b. to cooperate fully with the Commission's Division of Enforcement in this proceeding and any investigation, civil litigation and administrative proceeding related to this proceeding by, among other things: (i) responding promptly, completely, and truthfully to any inquiries or requests for information; (ii) providing authentication of documents; (iii) testifying completely and truthfully; and (iv) not asserting privileges under the Fifth Amendment of the United States Constitution.

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

By the Commission


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

Dated: August 24, 2004