

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

In the Matter of  
SHAHROKH NIKKHAH

CFTC Docket No. 95-13

ORDER

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In its Opinion and Order of March 25, 2005, the Commission vacated the Administrative Law Judge's ("ALJ") third initial decision on remand. *In re Nikkhah*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,044 (CFTC Mar. 25, 2005) ("*Nikkhah IV*"). The ALJ held that the record failed to show that respondent Shahrokh Nikkhah ("Nikkhah") had a positive net worth and that, under former Section 6(d) of the Commodity Exchange Act ("Act") the Commission could not impose a civil monetary penalty. *In re Nikkhah*, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,637 (ALJ Nov. 20, 2003). The Commission found that the ALJ's holding stemmed from his failure to give Division of Enforcement ("Division") an opportunity to develop the record on Nikkhah's net worth. Rather than remand this case to the ALJ yet again, the Commission proposed to reopen the record for the receipt of additional evidence directly to itself. Consequently, the Commission set forth a notice of its proposed procedure and invited the parties to comment on it.<sup>1</sup> *Nikkhah IV*, ¶ 30,044 at 57,188-89; *see also* Commission Regulation 10.107.

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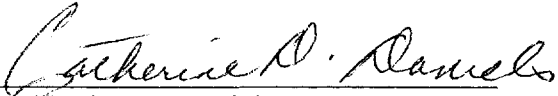
<sup>1</sup> The notice set forth in the order provided:

**Notice.** We propose to allow an additional 120 days for discovery, during which time the Division may, as it sees fit, make further attempts to obtain information from Nikkhah, through the means available to it under the Part 10 Regulations, including, as appropriate in its view, applying for a new subpoena, seeking enforcement of its June 2003 subpoena, or other action. We propose further that during the reopened discovery period, the Division may exercise its prosecutorial discretion to apply for subpoenas for the production of additional information from third parties who reasonably may be expected to have information relevant to Nikkhah's

Neither party submitted comments.<sup>2</sup> Accordingly, the procedure proposed in *Nikkhah IV* is hereby instituted. The discovery period is open as of the date of this order and shall remain open for 120 days thereafter. The Division may, as it sees fit, make further attempts to obtain information from Nikkhah through the means available to it under the Part 10 Regulations as discussed in the notice. The Division's memorandum of evidence and arguments about Nikkhah's net worth and the tentatively imposed civil monetary penalty is due 60 days after the close of discovery. Nikkhah shall have 60 days to respond to the Division's filing, and the Division shall have 30 days to reply.

IT IS SO ORDERED.

By the Commission (Acting Chairman BROWN-HRUSKA and Commissioners LUKKEN, HATFIELD, and DUNN).

  
Catherine D. Daniels  
Assistant Secretary of the Commission  
Commodity Futures Trading Commission

Dated: May 31, 2005

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net worth, including Nikkhah's family members, friends and business associates. Nothing shall limit the Division's discretion to make any inquiry it believes is reasonably calculated to identify relevant evidence, within or outside the United States, with or through the assistance of foreign regulators, as necessary and appropriate to meeting its burden of production.

We propose in addition that, within 60 days from the close of discovery, the Division shall file a memorandum setting forth its evidence respecting Nikkhah's net worth and any arguments it may wish to make respecting the tentatively imposed civil monetary penalty. Nikkhah shall have 60 days to respond to the Division's filing, and the Division shall have 30 days to reply. The Commission shall then make further orders as necessary for the resolution of this case.

<sup>2</sup> Nikkhah filed three untimely requests for extensions of time to comment on the Commission's proposed procedure. On the day that the comments originally were due, Nikkhah filed a motion to extend the comment period until May 9, 2005. By delegated authority, the comment period was extended to April 29, 2005. On April 28, contending that he was in the process of negotiating a settlement with the Division and that the Division consented to the extension, Nikkhah filed a request to extend the comment period for a second time to May 13, 2005. This request was granted. On May 13, Nikkhah requested a third extension to May 20, 2005. That motion is denied. A settlement apparently is not as imminent as Nikkhah intimated. Nothing prevents the parties from continuing their negotiations while this case goes forward.