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UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of	:	CFTC Docket No. 01-11
ANDY SABERI	:	OPINION AND ORDER

In October 2002, an Administrative Law Judge ("ALJ") concluded that respondent Andy Saberi ("Saberi") violated Section 4a(e) of the Commodity Exchange Act ("Act")[1] by holding 93 August frozen pork belly contracts at the opening of trading on August 15, 2000. The ALJ imposed sanctions that included a cease and desist order, a prohibition from trading on the Chicago Mercantile Exchange ("CME") for 180 days, and a civil monetary penalty of $110,000. *In re Saberi*, [2002-2003 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,196 (ALJ Oct. 23, 2002) ("I.D.").

Saberi raises procedural and legal challenges to the ALJ's liability analysis, and the Division of Enforcement ("Division") joins him in challenging the ALJ's sanctions analysis. Saberi focuses his sanctions challenges on alleged flaws in the ALJ's finding that he intentionally violated the applicable position limit. The Division defends that finding, but contends that the ALJ erred by limiting the trading prohibition he imposed to a single exchange.

As explained below, we conclude that the ALJ erred by failing to permit the post-hearing submissions described in Commission Rule 10.82, but that the record fails to establish that this error prejudiced Saberi. We uphold the ALJ's legal interpretations as well as his conclusion that the record shows that Saberi violated the applicable position limit. In light of our independent review of the record, we affirm the imposition of a cease and desist order and civil money

[1] Section 4a(e) prohibits trading in violation of a Commission-approved exchange rule fixing a limit on the number of contracts that a trader may hold. Chicago Mercantile Exchange ("CME") Rule 8302.E established the 50-contract limit on trading in the August 2000 frozen pork belly futures contract that is at issue in this proceeding.

penalty of $110,000. Instead of the trading ban imposed by the ALJ, we prohibit Saberi from trading on any market we regulate for a period of 30 days.

BACKGROUND

I.

The facts material to our liability analysis are undisputed. During August 2000, CME Rule 8302.E established the position limit for August CME frozen pork belly futures contracts applicable to speculative traders such as Saberi. The applicable limit substantially declined between Monday, August 14 and Tuesday, August 15, 2000.[2] As trading opened on the morning of August 14, Saberi was short 83 contracts and, during the course of the trading session, he sold an additional ten contracts. Consequently, when trading closed on August 14, 2000, his August CME frozen pork belly futures position was 43 contracts in excess of the 50-contract position limit. By the close of trading on August 15, 2000, Saberi had liquidated sufficient contracts to meet the 50-contract limit.

II.

While Saberi concedes that his August CME frozen pork belly futures position exceeded 50 contracts at the close of trading on August 14, 2000, he claims that he did not knowingly exceed the CME's position limit. In this regard, he offers an innocent explanation that rests on two assertions of ignorance: (1) that he was unaware that the applicable limit was 50 contracts; and (2) that he was unaware that the applicable limit applied on a per customer basis rather than a per account basis. The latter is important because it is undisputed that Saberi divided his 93-contract August CME frozen pork belly futures position between accounts he maintained at two

[2] The Commission approved CME Rule 8302.E in May 1998. Under that rule, the position limit applicable during a contract's delivery month varies with deliverable supply. For example, during the period August 7 through 14, 2000, the rule permitted speculators to hold 150 August CME frozen pork belly futures contracts. During the period August 15 through 23, 2000, however, the rule permitted speculators to hold only 50 contracts. Thereafter, the rule limited speculators to only 25 contracts.

different futures commission merchants ("FCMs"), Dean Witter Reynolds, Inc. ("Dean Witter") and ED&F Man International, Inc. ("Man").

The Division argues that Saberi's innocent explanation is implausible. Some of the facts material to assessing this question are undisputed. For example, the parties agree that during the period at issue, Saberi was an experienced futures trader. He had speculated for more than a decade, trading several different futures contracts on a variety of commodity exchanges.[4] In addition to the two accounts noted above, Saberi controlled the trading in two other Dean Witter accounts.[5] From time to time, Saberi had controlled futures positions of sufficient size to trigger an obligation to file large trader reports with the Commission.

The parties also agree that on August 14, 2000, CME personnel took indirect steps to inform Saberi both that the position limit for August CME frozen pork belly futures would soon be 50 contracts and that the limit applied on a per customer rather than a per account basis. During the period at issue, Thomas Sandy was the CME's agricultural surveillance manager. On the morning of August 14, 2000, he was aware that, as of the close of trading on Friday, August 11, 2000, three speculators held positions in the August CME frozen pork belly futures contract that were larger than 50 contracts. Two were on the long side of the market, while Saberi was on the short side of the market. Sandy contacted the FCMs that carried accounts holding these traders' frozen pork belly futures contracts. He confirmed the number of contracts held by each

[4] Saberi traded contracts in silver, gold, orange juice, platinum, copper, cotton, cocoa, cattle, lean hogs, and frozen pork bellies at the New York Mercantile Exchange, the Coffee Sugar and Cocoa Exchange, the Cotton Exchange, the New York Board of Trade, and the CME.

[5] Saberi controlled trading over accounts maintained in the name of his son and in the name of his company, Sabek, Inc. Trading in these accounts is not at issue in this proceeding.

trader and advised the firms to inform their customers that: (1) the position limit at the end of the trading day was 50 contracts; and (2) the limit applied per customer rather than per account.[6]

At the time of this call, Saberi's August CME frozen pork belly futures position stood at 83 contracts. His Dean Witter account included 50 contracts and his Man account included 33 contracts. During Monday's trading session, he sold an additional ten contracts in his Man account. No one from Man called him that day to pass on the information Sandy had communicated.

The parties' versions of events diverge at this point. The Division claims that Saberi's Dean Witter account executive, Craig Kirkham ("Kirkham"), telephoned him on August 14, 2000 and informed him both that 50 contracts would be the limit applicable after the close of trading, and that the limit applied on a per customer rather than a per account basis. In his investigatory deposition,[7] Kirkham testified that he passed this information to Saberi during a telephone conversation that took place sometime between 10:00 and 10:30 a.m. Central time.[8] Kirkham created records documenting aspects of this alleged conversation on August 15, 17, and 23, 2000.

In his investigatory deposition, Saberi recalled receiving calls from Kirkham on two consecutive days, but was uncertain about the date of the initial call. He testified, however, that during the initial conversation, Kirkham advised him that he had to "get out of some" contracts

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[6] As to the latter point, Sandy's Declaration states that he told Dean Witter to advise its customer that for purposes of complying with CME Rule 8302.E, "the positions of all accounts directly or indirectly owned or controlled by a person would be cumulated whether at one firm or more than one firm." Declaration of Thomas Sandy at ¶ 26 (May 30, 2002). The Declaration states that he told Man to advise its customer that "all of his positions, whether at one firm or more than one firm, would be cumulated for the purpose of ascertaining compliance with the position limit." *Id.* at ¶ 27.

[7] As discussed below, the parties agreed to resolve their factual disputes under the shortened procedures described in Commission Rule 10.92. In essence, the parties agreed to have the bulk of their factual disputes resolved on the paper record without the benefit of demeanor-based evidence.

[8] Kirkham and Saberi were in the Pacific Time Zone and the CME was located in the Central Time Zone.

to reduce his position to 50 contracts. Saberi denied that Kirkham spoke to him about having accounts at different firms.

The parties agree that Saberi achieved compliance with CME Rule 8302.E on Tuesday, August 15, 2000. That morning, Sandy contacted Dean Witter and Man and advised them that Saberi held a position that was 43 contracts beyond the applicable 50-contract limit. During this conversation, he advised the FCMs that Saberi's position was split between accounts at Dean Witter and Man. After Kirkham learned of Sandy's call, he telephoned Saberi and advised him that he needed to reduce his position to 50 contracts by the end of the day. Man personnel conveyed a similar message to Saberi. Saberi reduced his position to 50 contracts by liquidating 23 contracts through Dean Witter and 20 contracts through Man.

Between the close of trading on August 14, 2000 and the time that Saberi liquidated them on August 15, 2000, Saberi's excess contracts increased in value by nearly $55,000. The steep market decline at least partially reflected the trading activity of the two long traders that Sandy had identified as holding positions in excess of 50 contracts when trading opened on August 14, 2000. Both not only liquidated dozens of contracts that day, but also placed unfilled orders to liquidate additional contracts. Due to inadequate liquidity, these traders were unable to reduce their positions to the applicable limit by the close of trading.

III.

The Commission issued the Complaint in this proceeding in June 2001, and Saberi filed his Answer in July 2001. During the pre-hearing period, the parties agreed to resolve this matter under the shortened procedures set forth in Commission Rule 10.92. After the evidentiary record was completed, the ALJ issued his I.D. without permitting the parties to submit proposed findings and conclusions or briefs as contemplated by Commission Rule 10.82.

The ALJ found that Saberi intentionally failed to comply with the position limits in CME Rule 8302.E. In reaching this conclusion, he found that on the morning of August 14, 2000, Kirkham telephoned Saberi and advised him that: (1) he would be in violation of the 50-contract position limit at the end of the day if he did not reduce his position; and (2) that all his positions at different FCMs would be aggregated to determine whether he was in violation of the limit. I.D. at 54,186. The ALJ found that following this conversation, Saberi increased his position by selling an additional ten contracts. *Id.* According to the ALJ, Saberi's intentional violation of CME Rule 8302.E amounted to an intentional violation of Section 4a(e) of the Act. The ALJ did not provide any explanation for his choice of sanctions.

IV.

On appeal, Saberi claims that the ALJ deprived him of a fair hearing by failing to provide an opportunity to make the post-hearing submissions contemplated by Commission Rule 10.82. The Division contends that the ALJ acted within the discretion granted in Rule 10.82(b). It notes that even if the ALJ did err, Saberi has not established that the error prejudiced his opportunity for a fair hearing.

Saberi also raises substantive challenges to the ALJ's liability analysis. First, he contends that the ALJ erred by concluding that *scienter* is not a necessary element in the Division's proof of a violation of Section 4a(e) of the Act. He also claims that the ALJ misinterpreted the requirements for proving a violation of the position limits established in CME Rule 8302.E. In particular, he contends that CME Rule 443 must be consulted in determining whether he committed a rule violation for purposes of Section 4a(e) of the Act.

The Division counters that there is no logical basis for holding that proof of a violation of Section 4a(e) involves elements materially different from those that the United States Court of

Appeals for the Seventh Circuit found adequate in the context of a violation of Section 4a(1) of the Act in *CFTC v. Hunt*, 591 F.2d 1211 (7th Cir. 1979). As for the interpretation of CME Rule 8302.E, the Division contends that the sanction-related policies reflected in CME Rule 443 are immaterial to determining whether a rule violation has occurred for purposes of Section 4a(e) of the Act.

As to sanctions, the parties reargue their positions regarding the plausibility of Saberi's innocent explanation for his failure to comply with the CME's 50-contract position limit. In effect, Saberi argues that Kirkham's testimony is insufficiently reliable to support findings under the weight of the evidence standard. The Division contends that the apparent discrepancies Saberi emphasizes are insufficient to undermine the reliability of Kirkham's version of the events at issue.

As to the limited trading prohibition imposed by the ALJ, the Division argues that such a limit is not contemplated by the Act and is, in any case, inappropriate in the particular circumstances of this case. Saberi insists that the ALJ had the discretion to mold the scope of any trading prohibition to the gravity of the violation established on the particular record before him.

DISCUSSION

I.

The record confirms that the ALJ erred by issuing his I.D. prematurely. Commission Rule 10.92 permits parties to agree to a set of shortened procedures in lieu of those generally applicable in the context of an oral hearing. Subsection (h) of the rule specifically provides that post-hearing procedures "shall be the same as those in proceedings in which the shortened procedures have not been followed." Quite clearly, the Commission intended that parties

agreeing to shortened procedures retain the right to make the post-hearing submissions specified in Commission Rule 10.82. The ALJ is not authorized to abrogate this right.[9]

Saberi, however, has not established that the error was prejudicial. Prior to issuing his I.D., the ALJ permitted Saberi to submit written arguments outlining his theories of defense and explaining how he believed the record supported them. Moreover, the three briefs Saberi filed with the Commission on appeal cover all aspects of his theory of the case. Because we are determining all issues on a *de novo* basis, the errors in the ALJ's decision arguably traceable to his failure to follow Commission Rule 10.82[10] will not influence the outcome of this proceeding. In these circumstances, there is no basis to infer that the ALJ's procedural error was prejudicial.

II.

Saberi's substantive challenges to the ALJ's liability analysis are unpersuasive. As to the elements of a Section 4a(e) violation, Saberi insists that the Division must show that he acted with *scienter.* As the Division notes, however, the Seventh Circuit held in *CFTC v. Hunt,* 591 F. 2d 1211, 1218 (7th Cir. 1979), *cert. denied*, 442 U.S. 921 (1979), that *scienter* is not an element of proof in the context of a violation of Section 4a(1). Moreover, we have recognized that Congress intended Sections 4a(1) and 4a(5) of the Act (the predecessors to current Sections 4a(a) and 4a(e)) to have a shared meaning and interpretation. *In re Volume Investors Corp.*, [1990 -1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,234 at 38,676-77 (CFTC Feb. 10, 1992). Saberi offers no persuasive rationale for inferring that Congress intended the elements of proof for a violation of Section 4a(e) to be materially different from the elements of proof for a violation of Section 4a(a).

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[9] The discretion granted to ALJs under Subsection (b) of Rule 10.82 is limited to the procedures applicable to making the authorized submissions. Subsection (b) does not authorize procedures that simply dispense with the submissions.

[10] For example, the ALJ erred in finding that on August 14, 2000, Saberi increased his position by 10 contracts after Kirkham advised him both that the applicable limit at the close of trading would be 50 contracts and that the limit applied on a per customer rather than a per account basis. The record indicates that the order at issue was entered at approximately 9:49 a.m. Central time – at least ten minutes prior to Kirkham's telephone conversation with Saberi.

Saberi's arguments regarding the proper interpretation of CME Rule 8302.E are also unavailing. Our analysis takes its focus from the language of Section 4a(e), which states in relevant part that:

> It shall be a violation of this Act for any person to violate any rule . . . of any contract market . . . fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery . . . if such . . . rule . . . has been approved by the Commission . . . .

As noted above, in May 1998, the Commission approved CME Rule 8302.E, which quite clearly fixed "limits on the amount of trading which may be done or positions which may be held" in the CME frozen pork belly futures contract on August 15, 2000.

Saberi concedes this much, but focuses on Section 4a(e)'s requirement that the person at issue "violate" the pertinent exchange rule. In this context, he emphasizes that CME Rule 8302.E does not expressly state that it is a rule violation to hold more than the number of specified contracts. He claims that only CME Rule 443 addresses when a failure to comply with the limits in CME Rule 8302.E amounts to a rule violation, and that CME Rule 443 essentially indicates that no rule violation can occur until after the exchange issues a warning letter.[11]

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[11] The relevant part of this CME rule provides as follows:

443 SPECULATIVE AND HEDGE POSITION LIMIT VIOLATIONS

It is the duty of the Business Conduct Committee to enforce the speculative position limit rules of the Exchange. For purposes of this rule, positions in excess of any allowed by a valid hedge approval shall be deemed speculative position limit violations.

All speculative position limit violations shall be handled pursuant to Paragraphs A., B. and C. Failure to reduce any positions, including positions described in Paragraph C., as instructed by the Division of Market Regulation, shall result in the imposition of fines in accordance with the automatic fine schedule in Paragraph E. A customer who maintains a position at more than one clearing member and exceeds the speculative position limit will be deemed to have waived confidentiality regarding his position, and the clearing members carrying his positions will be informed of the required pro-rata reduction.

Any order or fine may be appealed by the clearing member, member or AP to the Business Conduct Committee which may modify or overturn the order or fine for good cause shown.

A. First Occurrence

The first occurrence of a speculative position limit violation will result in a warning letter to be issued by the Division of Market Regulation. In the case of a customer trading at more than one clearing member, the customer, in addition to the commodity representatives and clearing members, will be issued a warning letter. A

CME Rule 8302.E includes express language of prohibition: "[n]o person shall own or control more than" the number of contracts specified. This language clearly provides notice that the rule is violated when a person does, in fact, "own or control more than" the specified number of contracts. Saberi offers no support for his claim that such notice is invalid because it does not use the specific language "it is a rule violation to."

Saberi's interpretation of CME Rule 443 completely ignores the rule's context. Taken as a whole, the rule describes a scheme for sanctioning violations of CME rules establishing position limits. In this context, it distinguishes between a rule violation that will be reflected in the "permanent file of the Exchange," and a rule violation "that will not be recorded." The CME's decision to draw such a distinction for purposes of its sanctions does not justify an inference that conduct prohibited by CME Rule 8302.E is a rule violation for purposes of Section 4a(e) of the Act only when the CME deems it appropriate to record the violation in its permanent

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rule violation will not be recorded for the first occurrence of a speculative position limit violation; however, a record of the incident will be maintained.

B. First Violation Following a Warning Letter

The first speculative position limit violation within 12 months of the receipt of a warning letter shall constitute a rule violation which shall subject the violator to a cease and desist order to be issued by the Division of Market Regulation. The record of any orders issued and fines imposed hereunder shall become a part of the permanent file of the Exchange.

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C. Referral to the Business Conduct Committee

The Business Conduct Committee may take other actions or impose additional penalties in the following cases:

1. Where the violation occurs in the spot month;
2. Where the violation involves a position which is more than 150 percent of the speculative or approved hedge position limit;
3. Where the violation is the third offense within any 12-month period; or
4. Where the Division of Market Regulation deems the violation to constitute a severe abuse of Exchange rules.

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file.[12] In any event, Saberi's argument also ignores the timing and size of his violation, his status as a nonmember of the CME, and the fact that the CME determined to refer his violation of its rule to the Commission. The undisputed facts establish that Saberi violated Section 4a(e) of the Act by holding 93 August frozen pork belly contracts at the opening of trading on August 15, 2000.

III.

As noted above, Saberi's arguments regarding sanctions focus on the reliability of Kirkham's testimony that during a telephone conversation on August 14, 2000, he advised Saberi both: (1) that 50 contracts would be the limit applicable upon the close of trading; and (2) that the limit applied on a per customer rather than a per account basis. As to credibility, Saberi essentially claims that his testimony is at least as credible as Kirkham's testimony. As the party with the burden of proof, the Division must show that Kirkham's testimony is sufficiently credible and reliable to support findings under the weight of the evidence standard. *Cf. Violette v. LFG, LLC*, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,633 at 52,409-11 (CFTC Sept. 6, 2001).

Kirkham's testimony regarding his conversation with Saberi was specific, direct, and clear. Moreover, notes he prepared on August 15, 17, and 23, 2000, corroborate his version of the events at issue. Saberi's testimony regarding the conversation was, at best, unclear. He did directly deny that Kirkham spoke to him about having accounts at different firms during an initial conversation about position limits, but he did not recall the date that the initial conversation took place. Saberi acknowledged that he spoke with Kirkham about position limits on two consecutive days, but did not explain why they would have been discussing the issue on August 16, 2000 – the day after he came into compliance with the 50-contract limit. Saberi correctly notes that Kirkham had some incentive to lie to protect his

[12] Saberi's arguments regarding discriminatory prosecution and double jeopardy are facially defective. *See generally, In re Antonacci,* [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,038 (CFTC April 21, 1986); *LaCrosse v. CFTC,* 137 F.3d 925 (7th Cir. 1997).

interests. Saberi, however, had at least an equally strong incentive to mold his version of events to suit his litigation interests.

In these circumstances, we have no difficulty concluding that Kirkham's testimony was generally more credible than Saberi's testimony. Moreover, Saberi's challenges to the reliability of Kirkham's testimony are equally unavailing. Saberi suggests that on August 14, 2000, Kirkham was unaware that Saberi held CME August frozen pork belly contracts in an account at Man. In this context, he contends that it is implausible that during any conversation with Saberi on August 14, 2000, Kirkham raised the subject of accounts maintained at other FCMs, or advised Saberi that he had to have only "50 contracts total." Indeed, Saberi insists that Kirkham's version of the conversation can only be deemed plausible if the conversation did not take place until August 15, 2000.

Saberi's analysis, however, fails to consider the information Sandy conveyed to Dean Witter on the morning of August 14, 2000. In his declaration, Sandy said that he advised Dean Witter to inform its customer both that: (1) the position limit at the end of the trading day was 50 contracts; and (2) the limit applied per customer rather than per account. Communicating the latter information would hardly be necessary if Dean Witter's customer were only holding CME August frozen pork belly contracts in a Dean Witter account. In any case, even if Kirkham remained oblivious to the implicit warning reflected in Sandy's conversation, it is hardly implausible that he took pains to inform his customer of the two pieces of information specified by such a senior CME official. Carrying out the instruction was completely consistent with Kirkham's own self-interest. [13]

[13] Regardless whether his broker was aware of the position limit or failed on his own initiative to alert Saberi, as a matter of law, the responsibility for vigilance and the duty to comply with the position limit rule ultimately rested with Saberi. Pointing to the shortcomings (real or imagined) that his broker may have possessed is not a defense that excuses Saberi from liability under the Act. *See Goodman v. Benson*, 286 F.2d 896, 900 (7th Cir. 1961).

Given these circumstances, we conclude that Kirkham's testimony is sufficiently credible and reliable to support findings under the weight of the evidence standard. That testimony establishes that Saberi's violation of Section 4a(e) of the Act was intentional.

IV.

The Commission reviews sanctions *de novo* with the aim of deterring unlawful behavior. The appropriate balance of sanctions reflects the general gravity of the violation at issue and the particular facts and circumstances established on the record. As we review the record, we keep in mind that sanctions are imposed to carry out the Act's remedial purpose and to deter others from engaging in misconduct. *In re Piasio*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,276 at 50,691 (CFTC Sept. 29, 2000).

Cease and desist orders are imposed where there is a reasonable probability that a violator will again engage in illegal conduct. *Id. at* 50,692. The intentional nature of Saberi's violation supports an inference that it is reasonably probable that he will repeat his misconduct. Accordingly, the record warrants the imposition of a cease and desist order.

Similarly, the $110,000 civil monetary penalty imposed below adequately reflects the gravity of Saberi's intentional violation of an exchange rule aimed at maintaining orderly markets in contracts subject to the Act. Under Section 6(c), we may look to either the product of up to $110,000 times the number of respondent's proven violations, or up to three times a respondent's monetary gain from proven violations.[14] Within statutory constraints, civil monetary penalties should be set at a level that "remove[s] the economic benefit of the illegal activity" and "reflects a premium to offset the benefit of engaging in . . . undetected violations." *A Study of CFTC and Futures Self-Regulatory Organization Penalties*, [1992-1994 Transfer Binder] Comm. Fut. L.

[14] The $110,000 maximum penalty per violation applies to acts committed between November 27, 1996 and October 22, 2000. The maximum is subject to periodic adjustment for inflation. *See* Commission Regulation 143.8.

Rep. (CCH) ¶ 26,264 at 42,211 (CFTC Nov. 1, 1994) (quoting Administrative Conference of the United States Recommendation 79-3, 1 C.F.R. §305-79-3).

In this case, the ALJ proceeded on the basis of the "per violation" alternative, imposing the maximum penalty that could be imposed on Saberi for the single violation of the Act with which he was charged. Coincidentally, the statutory maximum is an amount double Saberi's stipulated gain, which deprives him of his profit and imposes a premium approximately equal to his gain. *See* Joint Stipulation of Undisputed Facts and Documents at 5 (June 3, 2002) ("The value of Saberi's 43 excess short positions increased $54,930 from the close of trading on August 14, 2000 to the time he liquidated them on August 15, 2000.").

Given the size of the civil monetary penalty, and the nature of Saberi's misconduct, we find it necessary to adjust the length of the trading ban. A trading prohibition is appropriate when the violation at issue threatens the integrity of the market mechanism. *In re Brenner*, [2002-2003 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,177 at 54,128 (CFTC Oct. 2, 2002), *aff'd, Brenner v. CFTC*, 338 F.3d 713 (7th Cir. 2003). An intentional violation of exchange rules limiting the size of a speculative position presents such a threat. Certainly the level of threat we must address is somewhat reduced, however, because Saberi came into compliance with the applicable limitation on August 15, 2000, and the threat of any market disruption was of a limited duration.[15] *Compare Volume Investors*, ¶ 25,234 at 38,679.

Although an active trader, Saberi is neither a Commission registrant nor a member of an exchange. While we do not condone this short-lived violation, the Act permits us to use our informed discretion on a case-by-case basis to determine the appropriate mix of sanctions. Upon

[15] Saberi suggests that it is significant that the CME did not impose any trading prohibition as a consequence of his conduct. As we have noted in other contexts, however, the scope of the public interest addressed in the context of Commission proceedings is frequently broader than that addressed in exchange proceedings. In any case, the record does not reliably establish the CME's rationale for failing to impose a trading prohibition under its own rules.

review of all the circumstances of this case and in view of applicable precedent, we believe that the public interest in deterrence will be best served by reducing the length of the trading prohibition. Accordingly, we reduce the length of Saberi's trading prohibition to 30 days.

As to the scope of the trading prohibition, we are not persuaded that the Act mandates that any trading prohibition imposed in a Commission proceeding extends to all the markets we regulate. On the other hand, because the markets we regulate tend to have similar mechanisms, a threat to the integrity of the market mechanism at one contract market is likely to constitute a threat to the integrity of the market mechanism at another contract market. Here, for example, other contract markets have position limits similar to those imposed by the CME, and we can reasonably infer that Saberi would be just as tempted to disregard those limits. Certainly, we have no basis to infer that the public would view the threat that Saberi poses to market integrity as limited to the CME. We are unable to trace the path of the ALJ's reasoning in limiting the ban to the CME or in choosing a six-month duration. Given these circumstances, we find no basis for limiting Saberi's trading prohibition to trading at the CME.

Accordingly, in addition to ordering Saberi to cease and desist from violating Section 4a(e) of the Act and to pay a civil monetary penalty of $110,000, we prohibit him from trading on any

market we regulate for a period of 30 days. These sanctions shall become effective on the 30th day following the date this order is served.[16]

IT IS SO ORDERED.

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

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

Dated: March 2, 2005

[16]A motion to stay the effect of these sanctions pending reconsideration by the Commission or review by a court must be filed within 15 days of the date this order is served.