

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

In the Matter of:

David Herman Janson  
Champaign, Illinois,

Respondent.

CFTC Docket No. 02-11

ORDER INSTITUTING PROCEEDINGS  
PURSUANT TO SECTIONS 6(c), 6(d)  
AND 8a OF THE COMMODITY  
EXCHANGE ACT, AS AMENDED, AND  
FINDINGS AND ORDER IMPOSING  
REMEDIAL SANCTIONS

**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that David Herman Janson (“Janson” or “Respondent”) has violated Section 4c(a) of the Commodity Exchange Act, as amended (“Act”), 7 U.S.C. §§ 1 *et seq.* (2001) and Commission Regulation 1.56(c), 17 C.F.R. § 1.56(c) (2001). Therefore, the Commission deems it appropriate and in the public interest that a public administrative proceeding be, and hereby is, instituted to determine whether Janson engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

**II.**

In anticipation of the institution of this administrative proceeding, Janson has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Without admitting or denying the findings herein, Janson acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c), 6(d) and 8a of the Commodity Exchange Act and Findings and Order Imposing Remedial Sanctions (“Order”). Janson consents to the use of the findings herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.<sup>1</sup>

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<sup>1</sup> Respondent does not consent to the use of the Offer or this Order as the sole basis for any other proceeding brought by the Commission other than a proceeding to enforce the terms of this Order, nor does Respondent consent to the use of the Offer, or the findings in the Order consented to in the Offer, by any other person or entity in this or any other proceeding. The findings made in the Order are not binding on any other person or entity named as a defendant or respondent in any other proceeding.

### III.

The Commission finds that:

#### A. SUMMARY

The U.S. Department of Agriculture (“USDA”) administers a Dairy Option Pilot Program (“DOPP”). DOPP trains and subsidizes milk producers learning to hedge their downside price risk with milk put options. To participate in DOPP, producers open accounts with futures commission merchants (“FCMs”) for the sole purpose of buying milk put options, and USDA pays 80 percent of the option premium plus \$30 commission per option purchased. The producers open their accounts, and place their orders, with the assistance of registered brokers who sign an agreement with USDA to participate in DOPP.

In July and August 2001, Respondent David Janson, president of Strategic Farm Marketing (“SFM”), a registered introducing broker (“IB”) and DOPP participant, improperly took advantage of the program. Janson advised dairy producers to open two commodity interest accounts, a DOPP account and a second account (“non-DOPP account”), that were linked for margin purposes. Acting on Janson’s advice, the producers bought milk put options in their DOPP accounts and sold puts with the same expiration month and the same strike price at the same or nearly the same premium in their non-DOPP accounts, leaving them with no actual position in the market and none of the downside price protection that DOPP was established to provide. This trading strategy allowed the producers to pocket some or all of the premium paid by USDA in virtually risk-free transactions. The transactions constitute wash sales as prohibited by Section 4c(a) of the Act. Janson also represented to prospective DOPP customers that SFM would not collect initial or maintenance margin from them, in violation of Commission Regulation 1.56(c), 17 C.F.R. § 1.56(c).<sup>2</sup>

#### B. RESPONDENT

Respondent David Herman Janson is 35 years old and resides in Champaign, Illinois. He has been registered with the Commission as an associated person (“AP”) of SFM, a registered IB, since October 1993, and has been listed as a principal of SFM since

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<sup>2</sup> USDA became aware of Janson’s activities in early August 2001 and contacted the Commission soon thereafter. In November 2001, the USDA issued an Informational Memorandum to all participating producers and IBs in order to clarify that transactions involving the simultaneous purchase and sale of put options are violative of DOPP rules. The Informational Memorandum can be found on the USDA Risk Management Agency website at “[www.rma.usda.gov/news](http://www.rma.usda.gov/news).”

July 1996, when he purchased the business.<sup>3</sup> During all relevant times, Janson was the president, principal, co-owner and an AP of SFM.<sup>4</sup>

### C. FACTS

DOPP gives milk producers the opportunity to learn how futures and options markets work and gives them first-hand experience in buying milk put options to ensure a minimum price for their milk. DOPP teaches producers how to use the put options to hedge their risk against declining milk prices. When milk prices fall below the option's strike price, the option increases in value and makes up the difference between the market price of the milk and the cost of the option. As an incentive to learn about this price risk management technique, the USDA pays 80 percent of the put option premium plus \$30 commission per option purchased. To be eligible for the subsidy, the put option must hedge the dairy producer's milk production and cannot be sold or exercised before one month prior to the expiration date. In order to participate, producers must attend a DOPP training session, apply to participate, and then select a DOPP-approved broker to assist them in opening a commodity interest account at an FCM. The broker must be registered and in good standing with the National Futures Association, attend a DOPP training session, and execute and comply with a written agreement with the USDA.

In April 2001, Janson signed a DOPP broker agreement with USDA on behalf of himself and SFM. In July and August 2001, Janson improperly took advantage of the program. He drafted and distributed to prospective DOPP customers a four-page document in which he discussed and recommended various option trading strategies that he claimed could be pursued under DOPP. One recommended strategy was to buy the most expensive put option that DOPP would allow, and to sell the same put option in a separate account. Janson explained that this would allow the producer, through a risk-free transaction, to pocket the 80 percent USDA would pay for the DOPP put option premium. Moreover, because the producers were long and short the same put option in separate accounts, they would not have to post margin. Virtually all of the producers who decided to participate in DOPP as SFM customers employed this strategy. Although under the terms of the DOPP agreement, Janson was to charge the customers' accounts for 20 percent of the premium of each put option purchased, Janson never collected their share of the premium. Janson advised them to open two commodity interest accounts, a DOPP account and a non-DOPP account, that were linked for margin purposes. Acting on his advice, the customers bought put options in their DOPP accounts and sold put options with the same expiration month and the same strike price at the same or nearly the same premium in their non-DOPP accounts, leaving them with no actual position in

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<sup>3</sup> Janson has also been registered as an AP and principal of Advantage Asset Management, a registered commodity trading advisor, since May 2001.

<sup>4</sup> Janson and two other APs of SFM provided voluntary testimony during the course of the Division of Enforcement's investigation.

the market and none of the downside price protection that DOPP was established to provide.

The customers stood to benefit financially from these transactions. Because their two accounts were linked for margin purposes, and because the accounts had equal and opposite positions, the FCM's accounting system determined that no margin was due from them. This strategy allowed them to obtain some or all of the 80 percent of the DOPP put option premium paid by USDA without any obligation to pay their 20 percent portion of the premium as required under DOPP rules. Janson also stood to benefit financially to the extent that he charged commissions for submitting both the orders to buy the DOPP put options and the orders to sell the non-DOPP put options.

### 1. The Wash Sales

As discussed above, during July and August 2001, Janson solicited and accepted paired DOPP customer orders, each pair containing an order to buy put options in the DOPP account and to sell put options with the same expiration month and the same strike price at the same or nearly the same premium in the non-DOPP account. Janson submitted the paired orders for execution in a manner designed to ensure that the customers were only exposed to minimal risk prior to execution and were not exposed to any market risk after both their orders to buy and their orders to sell had been executed. Any gain or loss in one account was offset by an equal and opposite gain or loss in the other account. The transactions had no economic substance and thus were wash sales.

### 2. The Representations That SFM Would Not Collect Margin

Janson represented to prospective DOPP customers that SFM would not collect margin from them if they participated in DOPP. For example, in July 2001, Janson drafted and distributed to prospective DOPP customers a four-page document in which he discussed various option trading strategies that he claimed could be pursued under DOPP. On page two of the document, Janson presented a strategy he called "opportunity #3" which stated:

Basically what you are doing in this strategy is buying the most expensive put the DOPP will allow you to buy, and selling the exact same put in your separate hedge account. You will be gaining the 80% the government has paid for the put less commissions and slippage.... Because you have the same put bought in one account and sold in another, there is no risk of margin calls.

The representations Janson made in that document were realized because SFM did, in fact, request that the FCM link the DOPP customers' two accounts for margin purposes. This linkage between the two accounts resulted in no margin being due for any of the DOPP customers because the accounts contained equal and offsetting positions, just as Janson had stated in his literature.

## D. VIOLATIONS OF THE ACT AND REGULATIONS

### 1. Janson Offered to Enter Into, Entered Into, and Confirmed the Execution Of Transactions That Were of the Character of Wash Sales

Section 4c(a) of the Act provides, in pertinent part, that, “It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction that is of the character of, or is commonly known to the trade as, a ‘wash sale’....” 7 U.S.C. 6c(a). The Commission has recently held that, in order to prove that a particular transaction is a wash sale, the Division must initially prove that the transaction achieved a wash result. *In the Matter of Piasio, et al.*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,276 at 50,685 (CFTC September 29, 2000). “The factors that show a wash result are (1) the purchase and sale (2) of the same delivery month of the same futures contract (3) at the same (or a similar) price.” *Id.* The Division must prove that at the time a respondent chose to participate in the transactions, they “knew the transactions were designed to achieve a wash result in a manner that negated risk.” *Id.* In a wash sales prosecution, the Division must also prove that a respondent intended not to effect a *bona fide* trade, however, scienter may be inferred from circumstantial evidence. *Reddy v. CFTC*, 191 F.3d 109, 119 (2<sup>nd</sup> Cir. 1999). Although evidence of motive strengthens an inference of intent, motive is not an essential element of a wash sale. *Id.*

Janson solicited and accepted paired DOPP customer orders to buy and sell put options with the same expiration month and the same strike price at the same or nearly the same premium and submitted those orders for execution in a manner designed to eliminate market risk. These orders had a wash result – *i.e.*, they left the customers with no actual market position and without the downside price protection intended by DOPP. By so doing, Janson offered to enter into, entered into and confirmed the execution of wash sales in violation of Section 4c(a).

### 2. Janson Represented to Customers That SFM Would Not Collect Margin From Them

Commission Regulation 1.56(b)(3) provides that, “No ... introducing broker may in any way represent that it will, with respect to any commodity interest in any account carried by [a] futures commission merchant for or on behalf of any person: ... (3) Not call for or attempt to collect initial and maintenance margin ....” 17 C.F.R. § 1.56(b)(3). Commission Regulation 1.56(c) provides that, “No person may in any way represent that a futures commission merchant or introducing broker will engage in any of the acts or practices described in paragraph (b) of this section.” 17 C.F.R. § 1.56(c).

Janson made written and explicit representations to prospective DOPP customers that SFM, an IB, would not collect margin from them. The literature that Janson drafted and distributed to prospective DOPP customers clearly represented that they would not be subject to margin calls because they would have equal and opposite positions. Moreover, as effected, the transactions allowed Janson’s customers to avoid margin requirements. The fact that Janson told prospective DOPP customers that they would not have to post margin if they pursued the strategy in “opportunity #3,” coupled with the fact that the FCM did not call for margin from the DOPP customers who had equal and opposite

positions, supports a strong inference that such transactions were undertaken, at least in part, to avoid margin requirements. By so doing, Janson violated Commission Regulation 1.56(c).

#### IV.

#### **OFFER OF SETTLEMENT**

Janson has submitted an Offer of Settlement in which, without admitting or denying the findings herein, he acknowledges service of this Order, admits the jurisdiction of the Commission with respect to the matters set forth herein, and waives: (1) the filing and service of a Complaint and Notice of Hearing; (2) a hearing; (3) all post-hearing procedures; (4) judicial review by any court; (5) any objection to the staff's participation in the Commission's consideration of the Offer; (6) all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-232, 110 Stat. 862-63, and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2001), relating to, or arising from, this action; and (7) 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.

Janson stipulates that the record basis on which this Order may be entered shall consist solely of the findings in this Order to which he has consented in the Offer. Janson also consents to the use of the findings contained in this Order in this proceeding and in any other proceedings brought by the Commission or to which the Commission is a party. Janson further consents to the Commission's issuance of this Order, which makes findings as set forth herein and orders that Janson: (1) cease and desist from violating Section 4c(a) of the Act, 7 U.S.C. § 6c(a), and Commission Regulation 1.56(c), 17 C.F.R. § 1.56(c); (2) pay a civil monetary penalty in the amount of Ten Thousand Dollars (\$10,000) as set forth below; and (3) comply with his undertaking as set forth below.

#### V.

#### **FINDING OF VIOLATIONS**

Solely on the basis of Janson's consent, as evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Janson violated Section 4c(a) of the Act, 7 U.S.C. § 6c(a), and Commission Regulation 1.56(c), 17 C.F.R. § 1.56(c).

#### VI.

#### **ORDER**

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

1. Janson cease and desist from violating Section 4c(a) of the Act, 7 U.S.C. § 6c(a), and Commission Regulation 1.56(c), 17 C.F.R. § 1.56(c);

2. Janson 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 and to make such payment by U.S. postal money order, certified check, or bank money order, made payable to the Commodity Futures Trading Commission, and addressed to Dennese Posey, or her successor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies David Herman Janson and the name and docket number of the proceeding. A copy of the cover letter and the form of payment shall be simultaneously transmitted to Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if Respondent fails to make payment of his penalty within fifteen (15) days of the due date, he shall be automatically prohibited from trading on or subject to the rules of any registered entity, as defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29), and his registration and any other registration he may seek shall be suspended automatically, until he shows to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon has been made; and

3. Janson also agrees that neither he nor any of his agents or employees under his authority or control 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 factual basis; provided, however, that nothing in this provision shall affect Janson's: (i) testimonial obligations; or (ii) right to take contrary legal positions in other proceedings to which the Commission is not a party. Janson will undertake all steps necessary to assure that all agents and employees under his authority and control understand and comply with this agreement.

By the Commission.

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

Dated: May 22, 2002