

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of : CFTC Docket No. 02-09
JOSEPH DEFRANCESCO and MARC GREENSTEIN :
Respondents. :
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ORDER MAKING FINDINGS AND IMPOSING SANCTIONS

I.

On March 20, 2002, the Commodity Futures Trading Commission ("Commission") filed a Complaint and Notice of Hearing ("Complaint") against Joseph Defrancesco, Marc Greenstein, and two other respondents. The Complaint charges that Defrancesco violated Sections 4b(a)(i), (iii) and (iv), 4c(a)(1), and 4g of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 6b(a)(i), (iii) and (iv), 6c(a)(1) and 6g (1994), and Sections 1.35(d) and 1.38 of the Commission's regulations promulgated thereunder (the "Regulations"), 17 C.F.R. §§ 1.35(d) and 1.38 (2001). The Complaint charges that Greenstein violated Section 4c(a)(1) of the Act, 7 U.S.C. § 6c(a)(1) (1994), and Section 1.38 of the Regulations, 17 C.F.R. § 1.38 (2001).

II.

In order to dispose of the allegations and issues raised in the Complaint as to them, Defrancesco and Greenstein each has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the allegations of the Complaint or the findings herein, Defrancesco and Greenstein acknowledge service of this Order Making Findings and Imposing Remedial Sanctions ("Order"). Defrancesco and Greenstein consent to the use of their Offers, this Order, and 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 Defrancesco and Greenstein do not consent to the use of their Offers, this Order, or the findings in this Order, consented to in their Offers, as the sole basis for any other proceeding brought by the Commission, other than a proceeding brought to enforce the terms of this Order. Defrancesco and Greenstein also do not consent to the use of their Offers, this Order, 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 named as a defendant or respondent in this or any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

From February 8, 2000 through November 17, 2000, Defrancesco fraudulently executed trades in the coffee futures ring of the Coffee, Sugar & Cocoa Exchange, (“CSCE”), a Division of the New York Board of Trade (“NYBOT”), by trading ahead of executable customer orders and allocating trades to his personal account at better prices than those received by his customers in violation of Sections 4b(a)(i) and (iii) of the Act. Defrancesco also fraudulently executed customer orders in the coffee futures ring on the CSCE by trading for his own account indirectly opposite his customer orders. As a result, Defrancesco engaged in fraud and deception in violation of Sections 4b(a)(i) and (iii) of the Act, indirect bucketing in violation of Section 4b(a)(iv) of the Act, trading at non bona fide prices in violation of Section 4c(a)(1) of the Act, and noncompetitive trading in violation of Section 1.38 of the Regulations. In addition, Greenstein and Defrancesco each entered into wash sales to accommodate indirectly bucketed trades, in violation of Section 4c(a)(1) of the Act. Defrancesco also failed to record required trading information on trading cards in violation of the recordkeeping requirements of Section 4g of the Act and Section 1.35(d) of the Regulations.

B. RESPONDENTS

JOSEPH DEFRANCESCO, who resides at 40 Curly Street, Long Beach, New York 11561, is now, and was at all times relevant to this matter, registered with the Commission as a floor broker pursuant to Sections 4e and 4f of the Act, 7 U.S.C. §§ 6e and 6f (1994), and a member of the Coffee, Sugar & Cocoa Exchange, Inc. At all times relevant to this matter, Defrancesco was employed by Integrity Trading Co., Inc. (“Integrity”), a floor brokerage firm on the CSCE. Defrancesco executed orders for Integrity customers and traded for his personal account, primarily in coffee futures on the CSCE.

MARC GREENSTEIN, who resides at 35 Thornwood Lane, East Hills, New York 11577, is now, and was at all times relevant to this matter, registered with the Commission as a floor broker pursuant to Sections 4e and 4f of the Act, 7 U.S.C. §§ 6e and 6f, and a member of the Coffee, Sugar & Cocoa Exchange, Inc.

C. FACTS

1. Trading Ahead of Executable Customer Orders

From February 8, 2000 through November 17, 2000, Defrancesco knowingly or recklessly traded coffee futures for his personal account while holding executable customer orders on the same side of the market. These trades for his personal account were at better prices than the trades that filled the executable customer orders. The time stamps on the order tickets and the trade times on his trading cards demonstrate that Defrancesco held the customer orders

while he traded for himself. Defrancesco engaged in trading ahead of his executable customer orders in a total of ten instances.

2. Allocation

In one instance when Defrancesco traded ahead, his conduct also constituted allocation of trades to his personal account at better prices than those received by the customers. The evidence shows that Defrancesco originally filled the customer order, then crossed out the original indicator that the trade was a customer trade, and allocated the trade to his personal account. The customer order was then filled on the next line at a price that was worse than the price received by the broker.

3. Indirect Bucketing

From February 8, 2000 through November 17, 2000, Defrancesco indirectly bucketed his customer orders by noncompetitively trading for himself and for customers with the aid of an accommodating trader. As a result, he ended up with positions for his own account opposite positions for his customers.

Defrancesco noncompetitively executed customer orders for coffee futures to engage in indirect bucketing on nineteen occasions. In each case, Defrancesco bought and sold noncompetitively in the same contract month at or about the same price and time opposite another trader (the "Accommodator") trading for his own account. He traded to fill a customer order on one of the trades and traded for his own account on the other trade. Routinely, the Accommodator took the other side of both trades for his own account and broke even or made a profit. Defrancesco ended with a position opposite his customer order. As a result of his actions, his customers were deprived of competitive executions of their orders because the trades were not executed by open outcry.

4. Wash Sales and Accommodation Trades

From February 8, 2000 through November 17, 2000, Greenstein and Defrancesco also engaged in wash sales and accommodation trades to enable other traders to indirectly bucket their customer orders. In these transactions, each broker traded for his own account to assist another broker in taking the opposite side of the other broker's customer order.

Greenstein noncompetitively engaged in wash sales or accommodation trades on thirteen occasions. Defrancesco did so six times. In each case, the Accommodator bought and sold noncompetitively for his personal account in the same contract month at or at about the same price and time opposite another trader. The other trader would make one trade to fill a customer order and the other trade for his own account. In so doing, the other trader would end up with a position opposite the position of his customer. In each case, the Accommodator either broke even or made a profit on the two consecutive noncompetitive trades.

5. Recordkeeping Violations

Members of contract markets are required by the Act and the Regulations to prepare and retain certain records. In particular, Section 1.35(d) of the Regulations requires that members prepare a trading card or other record detailing the trades executed by them.

From February 8, 2000 through November 17, 2000, Defrancesco routinely omitted the date, hour and/or minute of the transaction on numerous trading cards.

D. LEGAL DISCUSSION

1. CHEATING, DEFRAUDING AND DECEIVING CUSTOMERS AND BUCKETING OF ORDERS

Defrancesco cheated or defrauded, or willfully deceived customers in connection with the execution of his customer orders by trading ahead of executable customer orders and by allocating trades to his personal account to his customers' detriment. In addition, Defrancesco cheated, defrauded, and deceived his customers by indirectly bucketing his customers' orders.

A broker executing customer orders is a fiduciary and has an obligation to act in the best interests of his customers,² which includes a duty to seek the best possible price for his customers.³ As such, executing floor brokers act "on behalf of" their customers, and thus are subject to the anti-fraud provisions of Section 4b of the Act.⁴

Fraud under the Act requires a showing of scienter.⁵ Scienter is established 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 recklessly ignoring the truth.⁸

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

³ *United States v. Ashman*, 979 F.2d 469, 478 (7th Cir. 1992); *United States v. Dial*, 757 F.2d 163, 168 (7th Cir. 1985).

⁴ *In re Murphy*, [1984-86 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,798 at 31,151 (CFTC Sept. 25, 1985).

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).

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.*, [2000-1996 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 *Hammond v. Smith Barney*, [1987-90 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 (CFTC Mar. 1, 1990); 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).

Defrancesco cheated, defrauded and deceived his customers by intentionally and recklessly trading for his own account while holding executable customer orders. A broker violates the fiduciary duty to his customer and commits fraud when he chooses to act on behalf of himself (or someone other than his customer) to the disadvantage of his customer.⁹ The evidence establishes that at the time that Defrancesco traded for his personal account, he held executable customer orders in the same futures in which he traded personally. Further, Defrancesco acted with scienter because he knowingly or recklessly disregarded the fact that he held executable orders at the times that he traded at better prices for himself. In so doing, he unlawfully “traded ahead” of his customers’ orders in violation of Sections 4b(a)(i) and 4b(a)(iii) of the Act. In *United States v. Dial*, 757 F.2d 163, 167-70 (7th Cir. 1985), the Court held that “trading ahead” of customer orders constitutes fraud.

Defrancesco also allocated favorable trades to his personal account while filling customer orders at unfavorable prices in violation of Section 4b(a)(i) and 4b(a)(iii). The Commission has held that “Section 4b of the Act prohibits . . . allocation of winning and losing trades.”¹⁰

In addition, Defrancesco cheated, defrauded, and deceived his customers by indirectly taking the opposite side of his customer orders through noncompetitive trades. His trades fit the classic pattern of indirect bucketing, where a broker makes two consecutive trades (one for himself and one for his customer) at or at about the same price opposite the same broker, thereby enabling the broker to end up in a position opposite his customer. *In re Reddy*, 191 F.3d 109, 115 (2nd Cir. 1999). Some of the trades included audit trail irregularities, providing further evidence of noncompetitive execution. Noncompetitive executions of customer orders constitute cheating and defrauding of customers in violation of Sections 4b(a)(i) and (iii) of the Act.¹¹ The prices these customers received were not the result of arm’s length trading. A transaction can be a bucket even if the orders are executed on the exchange floor as long as the order is not submitted for competitive bidding.¹² As illustrated above, the customers were deprived of the competitive process. Moreover, they may have purchased at higher prices or sold at lower prices as a result of the brokers’ misconduct. By indirectly bucketing customer orders, Defrancesco violated Section 4b(a)(iv).

The Seventh Circuit reached a similar conclusion in upholding mail and wire fraud convictions in a Chicago Board of Trade soybean traders case. The court observed that “by picking customer prices and opposing traders, the defendants removed their customers from the pit’s competitive marketplace and forced the customers to accept the results they selected . . .

⁹ *In re Murphy*, ¶ 22,798 at 31,351-52.

¹⁰ *In re GNP Commodities Inc.*, [1990 – 1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,214 (CFTC Aug. 11, 1992) citing *In re Lincolnwood Commodities, Inc.*, [1982 – 1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,986 at 28,246 (CFTC Jan. 31, 1984); see also *In re Shahrokh Nikkhah*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶28,129 at 49,885 (CFTC May 12, 2000).

¹¹ *In re Murphy*, [1984-86 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,798 at 31,151 (CFTC Sept. 25, 1985); *In re Julian Marks*, 22 A.D. 761, 773 (1964) (customers “entitled to have the orders executed on their merits.”).

¹² *In re The Siegel Trading Company, Inc.*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,452 at 21,841 (ALJ July 26, 1977), vacated on other grounds, ¶ 20,637 (CFTC June 21, 1978).

denying the customer the opportunity to obtain a better price.” *United States v. Ashman*, 979 F.2d 469, 477 (7th Cir. 1992). “[E]ven though customers may not be entitled to any specific price, deliberate refusal to pursue the best price the broker can obtain can constitute a scheme to defraud.” *Id.* at 478.

Defrancesco had a duty to his clients to execute his customers’ orders in a manner where he would not personally profit at his customers’ expense. In trading ahead of customer orders, allocating favorable trades to his own account, and indirectly trading opposite customer orders, Defrancesco violated Section 4b of the Act.

2. ENTERING INTO WASH SALES OR ACCOMMODATION TRADES

Greenstein and Defrancesco violated Section 4c(a)(1) by engaging in wash sales and accommodation trades. Wash sales are trades undertaken for the purpose of giving the appearance that trades have been executed without positions actually being taken in the market, or without any actual change in the account holder’s market position. In *Bear Stearns*, ¶ 24,994 at 37,663, the Commission explained:

In a wash sale, for example, a trader gives the appearance of making independent decisions to buy and then sell (or sell and then buy) one or more futures contracts. His actual intention at the time he initiates the transaction, however, is to both buy and sell the contract at the same or a similar price – in other words, to create a financial and position nullity extraneous to the price discovery and risk shifting functions of the futures market.

The brokers’ round-turn accommodation trading for their own accounts are classic wash sales because in these trades they had no position in the market. They also were illegal accommodation trades because they were noncompetitive trades entered into by one trader to facilitate another trader in making trades prohibited by the Act or Regulations.¹³

3. NONCOMPETITIVE TRADING

By failing to execute their trades openly and competitively, Defrancesco and Greenstein violated Section 1.38 of the Regulations. Noncompetitive trades are generally transacted in accordance with expressed or implied agreements or understandings between the traders and include illegal price changes. Trades can be noncompetitive even though they were executed in the pit.¹⁴ For each of the indirect bucketing trades, Defrancesco, as the executing broker, made money, and Defrancesco or Greenstein, as the accommodators, either made money or broke even on the trade. By indirectly bucketing their customer orders, and accommodating other brokers to do so, the brokers engaged in noncompetitive trading in violation of Section 1.38 of the Regulations.

¹³ See *In re Reddy*, 191 F.3d 109, 115 (2nd Cir. 1999); *Sundheimer v. Commodity Futures Trading Commission*, 688 F.2d 150, 152 (2d Cir. 1982), *cert. denied*, 460 U.S. 1022 (1983); *In re Eisen*, 22 A.D. 758 (1963).

¹⁴ *In re Buckwalter*, ¶ 24,995 at 37,683 (citing *Laiken v. Dep’t of Agriculture*, 345 F.2d 784, 785 (2d Cir. 1965)).

4. NON BONA FIDE PRICES

Defrancesco violated Section 4c(a)(1) of the Act, which makes it unlawful to confirm the execution of any commodity futures transaction "if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price."¹⁵ Bona fide prices are only those prices that result from competitive trading. Defrancesco executed trades noncompetitively and thus the prices that were reported on his trading cards, to his customers and to CSCE were not bona fide.¹⁶ Such trades are not "bona fide" for purposes of Section 4b(a)(1), even if they accurately reflect the current price prevailing in the pit.¹⁷

5. RECORDKEEPING VIOLATIONS

Section 4g of the Act and Section 1.35(d) of the Regulations are violated by members of a contract market who fail to record required information on their trading cards or similar records. Section 1.35(d) of the Regulations specifies that members of contract markets prepare trading cards or similar records documenting their trades and requires, among other things, that for each transaction executed by the member, the trading card or other record state the date, hour and minute of the transaction. Defrancesco routinely failed to record this trade information in violation of Section 1.35(d) of the Regulations.

IV.

OFFERS OF SETTLEMENT

Defrancesco and Greenstein each has submitted an Offer in which each, without admitting or denying the findings herein: (1) acknowledges service of the Complaint and the Order; (2) admits the jurisdiction of the Commission with respect to the matters set forth herein; (3) waives 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 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63 (1996), 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 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 Complaint, Order and findings in the Order consented to in the Offer; and (5) consents to the Commission's issuance of

¹⁵ *In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,653 (CFTC Jan. 25, 1991).

¹⁶ *See In re Gilchrist*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,653 (CFTC January 25, 1991).

¹⁷ *Id.* at n.25; *see also United States v. Winograd*, 656 F.2d 279, 283 (7th Cir. 1981); *CFTC v. Savage*, 611 F.2d 270, 284 (9th Cir. 1979); *In re Goldwurm*, 7 A.D. 265 at 275-276 (1948).

the Order, which makes findings as set forth below and: (a) orders Defrancesco and Greenstein to cease and desist from violating the provisions of the Act and Regulations that they have been found to have violated; (b) imposes a civil monetary penalty upon Defrancesco of \$75,000, and upon Greenstein of \$35,000; (c) suspends the registration of Defrancesco for six months, and the registration of Greenstein for three months; (d) restricts the registration of Defrancesco for a two-year period including the imposition of supervision requirements; (e) prohibits Defrancesco from executing trades for customers for a period of five years; and (f) orders Defrancesco and Greenstein to comply with their undertakings consented to in their Offers.

V.

FINDINGS OF VIOLATIONS

Solely on the basis of the consents evidenced by the Offers, and prior to any adjudication on the merits, the Commission finds that Defrancesco violated Sections 4b(a)(i), (iii) and (iv), 4c(a)(1), and 4g of the Act, 7 U.S.C. §§ 6b(a)(i), (iii) and (iv), 6c(a)(1) and 6g, and Sections 1.35(d) and 1.38 of the Regulations, 17 C.F.R. §§ 1.35(d) and 1.38. The Commission also finds that Greenstein violated Section 4c(a)(1) of the Act, 7 U.S.C. § 6c(a)(1), and Section 1.38 of the Regulations, 17 C.F.R. § 1.38.

VI.

ORDER

Accordingly, it is hereby ordered that:

Defrancesco

1. Defrancesco shall cease and desist from further violations of Sections 4b(a)(i), (iii) and (iv), 4c(a)(1), and 4g of the Act, 7 U.S.C. §§ 6b(a)(i), (iii) and (iv), 6c(a)(1) and 6g, and Sections 1.35(d) and 1.38 of the Regulations, 17 C.F.R. §§ 1.35(d) and 1.38;
2. Defrancesco shall pay a civil monetary penalty within ten (10) days of the date of this Order in the amount of \$75,000, to be made 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 Defrancesco and the name and docket of this proceeding. Defrancesco shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if Defrancesco fails to pay the full amount of this penalty within fifteen

(15) days of the due date, he shall be automatically prohibited from the privileges of all registered entities until he shows to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of payment has been made;

3. Defrancesco's registration as a floor broker will be suspended for a period of six months beginning on the first Monday after the entry of the Commission Order accepting the Offer (the "Defrancesco Suspension Date");
4. Defrancesco is prohibited for a period of five years, beginning six months after the Defrancesco Suspension Date, from executing trades for customers on or subject to the rules of any registered entity;
5. For a period of twenty-four months, beginning six months after the Defrancesco Suspension Date:
 - a. Defrancesco may not act as a floor trader pursuant to Sections 4e and 4f of the Act, 7 U.S.C. §§ 6e and 6f, and as defined under Section 1.3(x) of the Regulations, 17 C.F.R. §1.3(x), unless his activities as a floor trader are subject to a Supplemental Sponsor Certification Statement ("Certification Statement"), in Form A attached hereto, executed and submitted to the Commission by a qualified sponsor¹⁸ ("Sponsor") and in accordance with Section 3.60(b)(2) of the Regulations, 17 C.F.R. §3.60(b)(2). Immediately upon the sponsor's ceasing to act as Defrancesco's sponsor, Defrancesco shall stop acting as a floor trader, until he once again obtains a Certification Statement executed and submitted to the Commission by a qualified sponsor, as defined below;
 - b. Defrancesco shall clear all trades through the FCM at which his Sponsor is an officer;
 - c. Defrancesco shall not serve on any disciplinary committee, arbitration panel, oversight panel or governing board of any self-regulatory organization ("SRO") registered or subject to regulation by the Commission;
 - d. Defrancesco shall not directly or indirectly act as a principal, partner, officer, or branch office manager of any entity registered or required to be registered with the Commission; Defrancesco shall not directly or indirectly act in any supervisory capacity over anyone registered or required to be registered with the Commission;

¹⁸ A "qualified sponsor" shall be an officer of the floor trader's clearing member who has executed Form A, if such officer is a registrant or a principal of a registrant.

- e. The Certification Statement will become part of Defrancesco's registration file, and shall be a public document and may be made available to any SRO and state and federal governmental entities;
- f. Defrancesco shall send written notification to the Membership Department of all exchanges where he has floor trading privileges that his registration is subject to conditions. Such written notification shall include a copy of the Order and the Certification Statement;
- g. If the Commission, NFA or any other SRO or a law enforcement agency or regulatory agency institutes a proceeding charging Defrancesco with violation of the Act, the Regulations, the rules or requirements of NFA or any other SRO, the terms of the Order or a disciplinary offense as defined in Section 1.63(a)(6) of the Regulations, Defrancesco shall notify Sponsor, and Defrancesco and Sponsor shall immediately notify the Commission and NFA in writing of such action;
- h. Defrancesco's registration shall be automatically suspended if, while registered with the Commission and subject to the Certification Statement, he is charged with a disciplinary offense as defined in Section 1.63(a)(6) of the Regulations, 17 C.F.R. § 1.63(a)(6), except that, as to offenses defined in Section 1.63(a)(6)(i)(C) of the Regulations, or charged with violating an order of the Commission or a federal court order finding and/or enjoining further violations of the Act and Regulations, suspension shall occur if fines aggregating \$5,000 or more are imposed during the period of these restrictions rather than during a calendar year;
- i. If Defrancesco's registration is automatically suspended, the period of suspension shall terminate six months after the date of the suspension, unless the Commission files within that period a Notice of Intent to Suspend, Revoke or Restrict Registration pursuant to Section 3.60(a) of the Regulations, 17 C.F.R. § 3.60(a), or a Complaint pursuant to Section 6c or 6(c) of the Act, 7 U.S.C. §§ 13a-1 or 9. If such Notice or Complaint is filed within the six-month period, his registration shall be suspended, until a final order is entered resolving all issues arising under such Notice or Complaint; and
- j. Within five days after Sponsor notifies Defrancesco in writing that he is terminating his sponsorship of that Respondent for any reason, Defrancesco and Sponsor will each file with the Director of the Commission's Division of Enforcement, the NFA and the Membership Department of the exchange where Respondent has trading privileges, a written notice of such termination. Such written notice shall fully set out the reasons that caused the Sponsor to terminate the supervision.

Greenstein

6. Greenstein shall cease and desist from further violations of Section 4c(a)(1) of the Act, 7 U.S.C. § 6c(a)(1), and Section 1.38 of the Regulations, 17 C.F.R. § 1.38;
7. Greenstein shall pay a civil monetary penalty within ten (10) days of the date of this Order in the amount of \$35,000, to be made 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 Greenstein and the name and docket of this proceeding. Greenstein shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if Greenstein fails to pay the full amount of this penalty within fifteen (15) days of the due date, he shall be automatically prohibited from the privileges of all registered entities until he shows to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of payment has been made;
8. Greenstein's registration as a floor broker will be suspended for a period of three months beginning on the third Monday after the entry of the Commission Order accepting the Offer (the "Suspension Date");

* * *
9. Defrancesco and Greenstein acknowledge that failure to comply with the Order shall constitute a violation of the Order and may subject them to administrative or injunctive proceedings, pursuant to the Act; and
10. Defrancesco and Greenstein are directed to comply with their undertakings:
 - a. neither they nor any of their 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 their: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Defrancesco and Greenstein shall take all steps necessary to ensure that their 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: July 23, 2002