UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

	:	**CFTC Docket No:** 07-06
In the Matter of:	:	**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS**
Pak Tong Lui, a/k/a Patrick Lui,	:	
Respondent.	:	

I.

The Commodity Futures Trading Commission ("Commission") has reason to believe that Pak Tong Lui, a/k/a Patrick Lui ("Lui") has violated Sections 4c(a) and 4m(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 6c(a) and 6m(2) (2002), and Section 1.38(a) of the Commission's Regulations ("Regulations"), 17 C.F.R. § 1.38(a) (2006). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Lui 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 this administrative proceeding, Lui has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings of fact or violations herein, Lui acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act Making Findings and Imposing Remedial Sanctions ("Order").[1]

[1] Lui consents to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Lui does not consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, as the sole basis for any other proceeding brought by the Commission other than a Commission registration proceeding related to him, a proceeding in bankruptcy related to him, or to enforce the terms of the Order. Nor does Lui consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding. The findings made in this 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

During at least the period of November through December 2005, Lui, an unregistered individual, controlled twenty-seven different customer accounts carried at Interactive Brokers ("Interactive"), a registered futures commission merchant, that traded commodity futures and securities. In November and December 2005, Lui prearranged and entered numerous buy or sell orders on behalf of fifteen of these customer accounts opposite each other in the Chicago Mercantile Exchange ("CME") Globex E-mini Russell 2000 futures contracts during thinly traded overnight hours. Lui's trading resulted in profits for certain of these customer accounts at the expense of others. These prearranged trades by Lui negated market risk and price competition and constituted fictitious sales in violation of Section 4c(a) of the Act. Further, by entering prearranged orders for his customers to buy or sell the Globex E-mini Russell 2000 with the intent that such orders would be executed opposite each other, Lui also engaged in noncompetitive transactions in violation of Commission Regulation 1.38(a). Lui acted as a commodity trading advisor ("CTA") because, for compensation or profit, he advised others about trading in commodity futures or commodity option contracts. Moreover, because Lui controlled more than fifteen customer trading accounts and was not exempt or subject to any exceptions from registration with the Commission as a CTA, Lui violated the registration requirements of Section 4m(1) of the Act.

B. RESPONDENT

Pak Tong Lui, a/k/a Patrick Lui, is a 48-year-old self-described computer programmer who resides in Flushing, New York. He has never been registered with the Commission in any capacity.

C. FACTS

In November and December 2005, Lui controlled and traded at least twenty–seven customer accounts carried at Interactive, one of which was his wife's account. Lui also traded his own account. Lui had written powers of attorney over only seventeen of those customer accounts.

Lui traded at least fifteen customer accounts opposite each other in the Globex March 2006 E-mini Russell 2000 contract during November 2005 and in the June 2006 E-mini Russell 2000 contract during December 2005. The trading in these accounts comprised a substantial portion of the volume of trading in these "back month" contracts on a number of days during November and December 2005. For example, on eight of his eleven trading days in November 2005, Lui's trading constituted 47% to 95% of the volume in the overnight trading of the March 2006 E-mini Russell 2000 contract. On six of his trading days in December 2005, Lui's trading constituted 96% on one evening and 100% of the volume on the other five evenings in the overnight trading of the June 2006 E-mini Russell 2000 contract.

As the person entering orders for these customer accounts to Globex and getting the resulting trade results, Lui knew that entering the various buy and sell orders in these back month contracts for different customers during these hours of low trading liquidity would almost certainly result in his customers' accounts trading against each other.

Overall, eleven of the fifteen customer accounts that Lui traded during this period lost an aggregate of $55,505 trading opposite other Lui customer accounts as a result of Lui's trading.[2] The remaining four accounts realized trading profits of roughly the same aggregate amount.

D. LEGAL DISCUSSION

1. Lui Entered into Fictitious Sales in Violation of Section 4c(a) of the Act

Section 4c(a) of the Act makes it unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction that is a fictitious sale. 7 U.S.C. § 6c(a) (2002). By enacting Section 4c(a), Congress sought to "ensure that all trades are focused in the centralized marketplace to participate in the competitive determination of the price of the futures contracts." S. Rep. No. 93-1131, 93d Cong., 2d Sess. 16-17 (1974); *see also Merrill Lynch Futures, Inc. v. Kelly*, 585 F. Supp. 1245, 1251 n.3 (S.D.N.Y. 1984) (interpreting pre-Commodity Futures Modernization Act precursor to Section 4c(a), noted that this provision was generally intended to prevent collusive trades conducted away from the pits). As a result, Section 4c broadly prohibits artificial trades intended to avoid the risks and price competition of the open market.

Although Section 4c(a) of the Act prohibits fictitious sales, the term is not defined in the Act. *In re Thomas Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,742 (CFTC Dec. 10, 1997); *In re Harold Collins*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,982 at 31,903 (CFTC Apr. 4, 1986). A fictitious sale is a general category which includes, at a minimum, the unlawful practices specifically enumerated in Section 4c(a) as well as prearranged trading. *Thomas Collins*, at 45,742; *Harold Collins* at 31,903; *In re Gimbel*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,213 at 35,003 (CFTC Apr. 14, 1988), *aff'd as to liability*, 872 F.2d 196 (7th Cir. 1989).. The central characteristic of a fictitious sale is the use of trading techniques that give the appearance of submitting trades to the open market while negating the risk or price competition incident to such a market. *In re Fisher*, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 29,725 at 56,052 n.11 (CFTC Mar. 24, 2004); *Thomas Collins*, ¶ 27,194 at 45,742; *Harold Collins*, ¶ 22,982 at 31,902.

The Commission has long held that prearranged trading is a form of fictitious sales. *Harold Collins*, ¶ 22,982 at 31,903. By determining trade information such as price and quantity outside the pit, then using the market mechanism to shield the private nature of the bargain from public scrutiny, both price competition and market risk are eliminated. *Id.*

Lui's control of the involved customer accounts, prearrangement of the specific quantity and price of the orders to be traded prior to the submission of the orders, and knowledge that the orders would likely cross each other on the Globex trading platform established that the resulting

[2] Six (6) of the eleven (11) accounts that incurred losses as a result of the particular trading during the relevant two-month period had overall profits trading futures for calendar year 2005.

trades were prearranged and thus fictitious sales. Consequently, by entering orders for prearranged trades Lui violated Section 4c(a)(1), which makes it unlawful to offer to enter into, or to enter into, any commodity futures transaction that is a fictitious sale.[3]

2. Lui Entered Noncompetitive Trades in Violation of Commission Regulation 1.38(a)

Commission Regulation 1.38(a) requires that all purchases and sales of commodity futures be executed "openly and competitively." The purpose of this requirement is to ensure that all trades are executed at competitive prices and that all trades are directed into a centralized marketplace to participate in the competitive determination of the price of futures contracts.

Noncompetitive trades are generally transacted in accordance with expressed or implied agreements or understandings between and among the traders. *In re Gilchrist*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,993 at 37,652 (CFTC Jan. 25, 1991). Noncompetitive trades are also a type of fictitious sale because they negate the risk incidental to an open and competitive market. *Fisher*, ¶ 29,725 at 56,052 n.11. Trades can be noncompetitive even though they were executed in the pit. *In re Buckwalter*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,994 at 37,683 (CFTC Jan. 25, 1991) (citing *Laiken v. Dep't of Agriculture*, 345 F.2d 784, 785 (2d Cir. 1965)). Prearranged trading is a form of anti-competitive trading that violates Commission Regulation 1.38(a). *Gimbel*, ¶ 24,213 at 35,003. By knowingly structuring and entering prearranged noncompetitive trades, Lui violated Commission Regulation 1.38(a).

3. Lui Violated Section 4m(1) by Failing to Register as a CTA.

Section 4m(1) of the Act makes it unlawful for any CTA, unless registered under the Act, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as a CTA.

Lui made use of the mails and other means or instrumentalities of interstate commerce in connection with trading at least twenty-seven (27) customer accounts through Interactive. While Commission Regulation 4.14 provides for an exemption from CTA registration under certain circumstances, Lui does not qualify for any exemption. Thus, Lui violated Section 4m(1) by failing to register as a CTA.

IV.

OFFER OF SETTLEMENT

Lui has submitted an Offer in which he, without admitting or denying the findings of fact or violations herein: (1) acknowledges service of the Order; (2) admits the jurisdiction of the

[3] CME Rule 539.C – Pre-Execution Discussions Regarding GLOBEX Trades allows a party to engage in pre-execution discussion of possible trades with other market participants on behalf of another party only where the party for whose benefit the trade is being made has previously consented to permit such discussions. Such circumstances were not present here.

Commission with respect to the matters set forth herein; (3) waives: service of the complaint and 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 possesses 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 (2006), 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 consented to in the Offer; and (5) consents to the Commission's issuance of the Order, which makes findings as set forth below and: (a) orders Lui to cease and desist from violating the provisions of the Act and Regulations that he has been found to have violated; (b) imposes a civil monetary penalty (c) orders Lui to pay restitution to certain customers; and (d) orders Lui to comply with the undertakings consented to in the Offer.

V.

FINDINGS OF VIOLATIONS

Solely on the basis of the consent evidenced by the Offer, and prior to any adjudication on the merits, the Commission finds that Lui violated Sections 4c(a) and 4m(1) of the Act, 7 U.S.C. §§ 6c(a) and 6m(1), and Section 1.38(a) of the Regulations, 17 C.F.R. § 1.38(a).

VI.

ORDER

Accordingly, it is hereby ordered that:

1. Lui cease and desist from violating Sections 4c(a) and 4m(1) of the Act and Section 1.38(a) of the Regulations;

2. Lui pay a civil monetary penalty in the amount of thirty thousand dollars ($30,000) due within ten (10) days of the date of the Order; payment is 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:

Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman - AMZ-300
DOT/FAA/MMAC
6500 S. Macarthur Blvd.
Oklahoma City, OK 73169

If payment by electronic transfer is chosen, contact Marie Bateman at 405-954-6569 for instructions. Respondent shall accompany payment of the penalty with a cover letter that identifies the Respondent and the name and docket number of this proceeding. Respondent shall simultaneously transmit a copy of the cover letter and the form of payment to:

Office of Cooperative Enforcement
Division of Enforcement
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581.

In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2), if Lui fails to pay the full amount 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 with interest thereon to the date of payment has been made;

3. Lui pay restitution in the amount of $55,505. The amount of restitution represents the amount of funds that persons whose accounts were controlled by respondent lost due to the fictitious sales and noncompetitive trading by respondent. Those persons are identified in Exhibit A attached to the Order, which includes the total amount of restitution owed to each person. Restitution shall be paid within ten days of entry of the Order and Lui shall provide copies of the restitution checks to the Director, Division of Enforcement, and the Office of Cooperative Enforcement, Division of Enforcement, at Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. Omission of any person from Exhibit A shall in no way limit the ability of such omitted person from seeking recovery from respondent or any other person or entity. Further, the amounts payable to each person identified in Exhibit A shall not limit the ability of any such person from proving that a greater amount is owed from respondent or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any person that exist under state or common law;

4. Lui comply with the following undertakings:

A. For a period of four (4) years, Lui shall not apply for registration or seek exemption from registration with the Commission in any capacity, except as provided for in Section 4.14(a)(9) of the Regulations, 17 C.F.R. § 4.14(a)(9), and shall also not engage in any activity requiring such registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Regulations, or act as a principal, agent, officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Section 4.14(a)(9) of the Regulations; and

B. Neither Lui nor any of their agents or employees under his authority and 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 a factual basis; provided, however, that nothing in this provision affects his: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Lui shall take all steps necessary to ensure that his respective agents or employees, if any, understand and comply with this undertaking.

Lui acknowledges that failure to comply with the Order shall constitute a violation of the Order and may subject him to administrative or injunctive proceedings, pursuant to the Act.

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

By the Commission

Eileen A. Donovan

Eileen A. Donovan
Acting Secretary to the Commission
Commodity Futures Trading Commission

Dated: April 25, 2007