UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:	)	
Mehran Khorrami and Cayley Investment Management, LLC,	)	**CFTC Docket No.** 20-15
Respondents.	)	

ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS

I. INTRODUCTION

The Commodity Futures Trading Commission ("Commission") has reason to believe that in February 2018 ("Relevant Period"), Mehran Khorrami ("Khorrami") and Cayley Investment Management, LLC ("CIM") (collectively, "Respondents") violated Section 4c(a)(l) and (2) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6c(a)(l), (2) (2018), and Commission Regulation ("Regulation") 1.38(a), 17 C.F.R. § 1.38(a) (2019). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondents have submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondents consent to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions ("Order"), and acknowledge service of this Order.[1]

[1] Respondents consent to the use of the findings of fact and conclusions of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agree that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondents do not consent, however, to the use of this Order, or the findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondents do not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Khorrami, on behalf of CIM, engaged in wash sales in violation of Section 4c(a)(l) and (2) of the Act, 7 U.S.C. § 6c(a)(l), (2) (2018). Khorrami entered bids and offers of similar quantities in the same futures product for trading accounts that had the same beneficial owner and which were intended to and did in fact offset each other upon execution. By intentionally entering these offsetting orders in this manner and achieving the goal of having these bids and offers offset each other upon execution, Khorrami negated the risk or price competition incidental to an open and competitive marketplace and thus engaged in noncompetitive transactions in violation of Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2019).

B. RESPONDENTS

Respondent CIM is a Delaware limited liability company with its principal place of business in Great Neck, New York. CIM is registered with the Commission as a Commodity Pool Operator and a Commodity Trading Advisor.

Respondent Khorrami is a principal of CIM and is registered with the Commission as an Associated Person of CIM. Khorrami is the founder and sole owner of CIM.

C. FACTS

During the Relevant Period, Khorrami, on behalf of CIM, engaged in multiple wash and non-competitive transactions for accounts held by a beneficial owner that was a client of CIM. These transactions involved futures products such as British Pound, Euro FX, Swiss Franc, and Japanese Yen futures traded on the Chicago Mercantile Exchange ("CME"), crude oil futures traded on the New York Mercantile Exchange ("NYMEX"), and gold futures traded on the Commodity Exchange Inc. ("COMEX"). CME, NYMEX, and COMEX are all designated contract markets owned and operated by CME Group, Inc. ("CME Group").

Specifically, on February 8, 2018, Khorrami placed simultaneous buy and sell orders in six different futures contracts. Initially, CIM placed orders at different bid and offer prices, but after being unable to fill the orders, Khorrami repeatedly modified the orders until the bid and offer prices matched. This resulted in a series of pre-arranged cross trades in the Crude Oil, British Pound, Euro FX, Swiss Franc, and Japanese Yen contracts. In total, Respondents made six noncompetitive prearranged trades. Respondents crossed 73 lots of British Pound, 193 lots of Euro FX, 104 lots of Japanese Yen, 92 lots of Swiss Franc, 70 lots of Gold, and 6 lots of Crude Oil.

III. LEGAL DISCUSSION

A. Respondents Entered into Wash Sales in Violation of Section 4c(a)(1) and (2) of the Act

Section 4c(a)(1) and (2) of the Act, 7 U.S.C. § 6c(a)(1), (2) (2018), in part, makes it "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.'" A wash sale is a form of fictitious sale. *In re Gimbel*, CFTC No. 84-40, 1988 WL 232267, at *1 (Apr. 14, 1988), *aff'd as to liability sub nom. Gimbel v. CFTC*, 872 F.2d 196 (7th Cir. 1989). "[T]he Commission also remains of the view that transactions initiated with an intent to avoid bona fide trading transactions that result in a 'wash' of the constituent positions are wash sales under Section 4c(a)(A) without regard to the motivation for the particular transaction." *Id.* at *4 n.6.

To establish that a wash sale has occurred, it must initially be demonstrated that the transaction at issue achieved a wash result. The Commission may demonstrate that the trades resulted in a wash by showing: "(1) the purchase and sale (2) of the same delivery month of the same futures contract (3) at the same (or a similar) price." *Wilson v. CFTC*, 322 F.3d 555, 559 (8th Cir. 2003) (citing *In re Gilchrist*, CFTC No. 83-58, 1991 WL 83518, at *9 (Jan. 25, 1991)).

In addition to the factors enumerated in *Gilchrist*, intent must be proven to establish a violation of Section 4c of the Act. *See, e.g.*, *Reddy v. CFTC*, 191 F.3d 109, 119 (2d Cir. 1999). The intent to negate risk or price competition and avoid a bona fide market position can be inferred from prearrangement, or "from the intentional structuring of a transaction in a manner to achieve the same result as prearrangement." *In re Three Eight Corp.*, CFTC No. 88-33, 1993 WL 212489, at *7 n.15 (Jun. 16, 1993) (citing *In re Collins*, CFTC No. 77-15, 1986 WL 66165, at *5 (Apr. 4, 1986), *rev'd on other grounds sub nom. Stoller v. CFTC*, 834 F.2d 262 (2d Cir. 1987)). The placement of offsetting orders to buy and sell, while simultaneously taking steps to "enhance the likelihood that the buy and sell orders would be filled at the same or a similar price" is persuasive evidence that the trader intends to negate risk and price competition. *Collins*, CFTC No. 77-15, 1986 WL 66165, at *5 (Apr. 4, 1986); *see also In re Piasio*, CFTC No. 97-9, 2000 WL 1466069 (Sept. 29, 2000) (finding customer who placed paired buy and sell orders, with specific pricing and loss limitation instructions, "structured orders to negate risk" and thus had intent to violate Section 4c), *aff'd sub nom. Piasio v. CFTC*, 54 Fed. App'x 702 (2d Cir. 2002).

Khorrami entered offsetting orders for the purchase and sale of the same delivery month of the same futures contract that achieved wash results. Additionally, Khorrami knowingly entered into the purchase and sale of these futures contracts for the purpose of negating market risk. In doing so, Khorrami violated Section 4c(a)(1) and (2) of the Act by entering into transactions of the character of, and commonly known as, wash sales.

Khorrami engaged in the foregoing acts within the scope of his employment, office, or agency with CIM. Therefore, pursuant to Section 2(a)(l)(B) of the Act, 7 U.S.C. § 2(a)(l)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2019), CIM is liable for Khorrami's violations of Section 4c(a)(l) and (2) of the Act.

B. Respondent Executed Noncompetitive Trades in Violation of Commission Regulation 1.38(a)

Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2019), 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 also a type of fictitious sale because they negate the risk incidental to an open and competitive market. *In re Fisher,* CFTC No. 93-2, 2004 WL 584216, at *3 n.11 (Mar. 24, 2004); *see also In re Copersucar Trading A.V.V.*, CFTC No. 17-22, 2017 WL 3588915, at *3-4 (Aug. 15, 2017) (consent order) (structuring and transferring positions between proprietary accounts constituted violations of Regulation 1.38 (a)).

Because Khorrami structured and entered the offsetting orders with the intent that they would offset Proposed Respondents' original bids or offers and negate risk, the executions of these orders were not open and competitive. Thus, because he engaged in noncompetitive trades, Khorrami violated Regulation 1.38(a).

Khorrami engaged in the foregoing acts within the scope of his employment, office, or agency with CIM. Therefore, pursuant to Section 2(a)(l)(B) of the Act, 7 U.S.C. § 2(a)(l)(B) (2018), and Regulation 1.2, 17 C.F.R. § 1.2 (2019), CIM is liable for Khorrami's violations of Regulation 1.38(a).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondents violated Section 4c(a)(l) and (2) of the Act, 7 U.S.C. § 6c(a)(l), (2) (2018), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2019).

V. OFFER OF SETTLEMENT

Respondents have submitted the Offer in which they, without admitting or denying the findings and conclusions herein:

A. Acknowledge service of this Order;

B. Admit the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;

C. Waive:

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 and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;

6. Any and all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018), and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2019), relating to, or arising from, this proceeding;

7. Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and

8. Any claims of Double Jeopardy based on the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief, including this Order;

D. Stipulate that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents have consented in the Offer; and

E. Consent, solely on the basis of the Offer, to the Commission's entry of this Order that:

1. Makes findings by the Commission that Respondent**s** violated Section 4c(a)(l) and (2) of the Act, 7 U.S.C. § 6c(a)(l), (2) (2018), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2019);

2. Orders Respondents to cease and desist from violating Section 4c(a)(l) and (2) of the Act, 7 U.S.C. § 6c(a)(l), (2) (2018), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2019);

3. Orders Respondents to pay, jointly and severally, a civil monetary penalty in the amount of one-hundred fifty thousand dollars ($150,000), plus post-judgment interest;

4. Orders Respondents and their successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent**s** shall cease and desist from violating Section 4c(a)(l) and (2) of the Act, 7 U.S.C. § 6c(a)(l), (2) (2018), and Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2019).

2. Respondents shall pay, jointly and severally, a civil monetary penalty in the amount of one-hundred fifty thousand dollars ($150,000) ("CMP Obligation"). If the CMP Obligation is not paid immediately, then post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2018).

   Respondents shall pay the CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

   MMAC/ESC/AMK326
   Commodity Futures Trading Commission
   Division of Enforcement
   6500 S. MacArthur Blvd.
   HQ Room 181
   Oklahoma City, OK 73169
   (405) 954-6569 office
   (405) 954-1620 fax
   9-AMC-AR-CFTC@faa.gov

   If payment is to be made by electronic funds transfer, Respondents shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondents shall accompany payment of the CMP Obligation with a cover letter that identifies the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

3. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

   1. Public Statements: Respondents agree that neither they nor any of their successors and assigns, agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that

nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondents and their successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

2. Partial Satisfaction: Respondents understand and agree that any acceptance by the Commission of any partial payment of Respondents' CMP Obligation shall not be deemed a waiver of their obligation to make further payments pursuant to this Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

3. Change of Address/Phone: Until such time as Respondents satisfy in full their CMP Obligation as set forth in this Order, Respondents shall provide written notice to the Commission by certified mail of any change to their telephone number and mailing address within ten calendar days of the change.

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

By the Commission.

Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission

Dated: May 7, 2020