

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

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**12:22 pm, Jan 20, 2015**

**In the Matter of:**

**Olam International, Ltd. and  
Olam Americas, Inc.,**

**Respondents.**

**CFTC Docket No. 15 - 13**

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

**I.**

The Commodity Futures Trading Commission ("Commission") has reason to believe that Olam International, Ltd. ("Olam International") and Olam Americas, Inc. ("Olam Americas") (collectively, "Respondents") violated Section 4a(e) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6a(e) (2012), on seven trading days between February 2011 and August 2014; Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2012), and Commission Regulation ("Regulation") 1.38(a), 17 C.F.R. § 1.38(a) (2014), on sixty-four occasions between February 2011 and January 2013; and Section 4i of the Act, 7 U.S.C. § 6i (2012), and Regulation 18.04, 17 C.F.R. § 18.04 (2014). 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.

**II.**

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 Sections 6(c) and 6(d) of the Commodity Exchange Act, as Amended, Making Findings and Imposing Remedial Sanctions ("Order") and acknowledge service of this Order.<sup>1</sup>

<sup>1</sup> Respondents consent to the entry of this Order and 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 Respondents do not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor do Respondents

### III.

The Commission finds the following:

#### A. Summary

On seven trading days between February 2011 and August 2014, Olam International and Olam Americas held aggregated net positions in cocoa futures contracts that exceeded position limits established by ICE Futures U.S. Inc. ("IFUS"). On sixty-four occasions between February 2011 and January 2013, Olam International and Olam Americas executed exchange of futures for physical transactions ("EFPs") opposite each other's cocoa futures trading accounts, even though their accounts were not independently controlled as required for such transactions. Additionally, Olam International submitted to the Commission a Form 40 "Statement of Reporting Trader" in each of 2010 and 2012, and Olam Americas submitted to the Commission a Form 40 in 2012, that failed to identify all required information, including that their cocoa futures trading accounts were not independently controlled.

#### B. Respondents

**Olam International, Ltd.** is a global supply chain manager of agricultural commodities with its headquarters in Singapore. Among other activities, it purchases cocoa from farmers, merchants, and marketing associations, processes cocoa, and sells it to chocolate manufacturers. Olam International has never been registered with the Commission in any capacity.

**Olam Americas, Inc.** is a wholly-owned subsidiary of Olam International and is based in New Jersey. Among other activities, it purchases cocoa from Olam International and unrelated parties and sells cocoa to end users in the United States. Olam Americas has never been registered with the Commission in any capacity.

#### C. Facts

The trading of cocoa futures is subject to position limits established by IFUS. IFUS Rule 6.17(b), which was in effect at all times relevant to this Order, states that the maximum net long or short position that a market participant may own or control in the cocoa futures contract traded on IFUS is 1,000 contracts during the spot month, a limitation that becomes effective at the close of business on the trading day prior to first notice day.<sup>2</sup>

At all times relevant to this Order, Olam International operated a futures trading desk in London, England, and Olam Americas operated a futures trading desk in Summit, New Jersey. Between February 2011 and January 2013, cocoa futures traders on both desks had access to each other's position information and regularly discussed the cocoa markets, and Olam Americas' cocoa futures traders placed orders to buy and sell cocoa futures contracts on behalf

consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

<sup>2</sup> First notice day is the first day on which notices of intent to deliver actual commodities against futures market positions can be received.

of Olam International's cocoa operations in Ecuador. Additionally, between January 2012 and May 2012, an Olam Americas cocoa futures trader supervised certain of Olam International's cocoa futures trading activities. As a result, between February 2011 and January 2013, Olam International's and Olam Americas' cocoa futures positions should have been aggregated for position limit purposes.

When aggregated, the cocoa futures positions of Olam International and Olam Americas exceeded the 1,000-contract spot month position limit for cocoa futures contracts traded on IFUS as follows: in the March 2011 contract, by 508 contracts on February 11, 2011; in the March 2012 contract, by 923 contracts on February 14, 2012, 516 contracts on February 15, 2012, and 90 contracts on February 16, 2012; and in the May 2012 contract, by 187 contracts on April 16, 2012 and 26 contracts on April 17, 2012.

The Act and Regulations permit noncompetitive trading, such as EFPs, only if such transactions are conducted in accordance with rules of an exchange, such as IFUS, that are approved by the Commission. At all times relevant to this Order, IFUS rules permitted the transaction of EFPs between independently controlled accounts. However, Olam International's and Olam Americas' cocoa futures trading accounts were not independently controlled between February 2011 and January 2013, rendering the sixty-four EFPs they executed opposite each other's accounts during this time period impermissible.

Upon special call by the Commission, traders who hold reportable positions are required to file with the Commission a "Statement of Reporting Trader" on Form 40. The Form 40 asks the reporting trader to identify whether the trader controls the futures or options trading of any other persons, including individuals, associations, partnerships, corporations, and trusts. It also asks the reporting trader if any other persons control the trading of the reporting trader. Olam International, in 2010 and 2012, and Olam Americas, in 2012, filed with the Commission a "Statement of Reporting Trader" that answered both of these questions in the negative, failing to disclose that their cocoa futures trading accounts were not independently controlled.

On February 25, 2013, Olam International and Olam Americas began aggregating their cocoa futures positions and submitted a revised Form 40 to the Commission disclosing that they were trading cocoa futures as a single global unit. Subsequently, on August 15, 2014, their aggregated cocoa futures positions exceeded the 1,000-contract spot month position limit for cocoa futures contracts traded on IFUS in the September 2014 contract by 24 contracts. Olam Americas self-reported this violation to IFUS and reduced their position to within position limits on the following trading day.

#### IV.

#### LEGAL DISCUSSION

Section 4a(e) of the Act, 7 U.S.C. § 6a(e) (2012), makes it unlawful "for any person to violate any bylaw, rule, regulation, or resolution of any contract market, derivatives transaction execution facility, or other board of trade licensed, designated, or registered by the Commission . . . 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 or under options on such

contracts or commodities, if such bylaw, rule, regulation, or resolution has been approved by the Commission or certified by a registered entity pursuant to [S]ection 5c(c)(1)” of the Act, 7 U.S.C. § 7a-2(c) (2012). On September 1, 2005, the Board of Trade of the City of New York, Inc. (“NYBOT”), a designated contract market pursuant to Section 5 of the Act that by later merger became IFUS,<sup>3</sup> submitted written certification to the Commission pursuant to Section 5c(c)(1) of the Act for an amendment to its Rule 6.17 that established the spot month limit for cocoa futures positions traded on the exchange as 1,000 contracts.

Regulation 150.5(g), 17 C.F.R. § 150.5(g) (2014), provides that “[i]n determining whether any person has exceeded the limits established [by a designated contract market], all positions in accounts for which such person by power of attorney or otherwise directly or indirectly controls trading shall be included with the positions held by such person; such limits upon positions shall apply to positions held by two or more person[s] acting pursuant to an express or implied agreement or understanding, the same as if the positions were held by a single person.” Similarly, IFUS Rule 6.12 provides that IFUS’s position limits “shall apply to all positions held by any Person, including those positions in accounts for which such Person by power of attorney or otherwise directly or indirectly controls trading; and in the case of positions held by two (2) or more Persons acting pursuant to an express or implied agreement or understanding, the same as if all of the positions were held by a single Person.”

The Commission does not need to establish *scienter* – i.e., proof of intent to exceed the applicable position limit – in order to prove a violation of Section 4a(e) of the Act. *See Saberi v. CFTC*, 488 F.3d 1207, 1212 (9th Cir. 2007); *CFTC v. Hunt*, 591 F.2d 1211, 1218 (7th Cir. 1979). Instead, the plain language of Section 4a(e) of the Act “unambiguously imposes liability for violations of contract market position limit rules” such as IFUS Rule 6.17. *Saberi*, 488 F.3d at 1212.

Because Olam International and Olam Americas directly or indirectly controlled the other’s cocoa futures trading activities and/or acted pursuant to an express or implied agreement or understanding, their cocoa futures positions should have been aggregated for position limit purposes beginning in February 2011. By exceeding, on an aggregated basis, the IFUS spot month limit of 1,000 cocoa futures contracts on seven trading days between February 2011 and August 2014, Respondents violated Section 4a(e) of the Act.

Section 4c(a) of the Act, 7 U.S.C. § 6c(a) (2012), makes it unlawful to engage in any transaction that is of the character of, or commonly known to the trade, as a “wash sale” or that is a fictitious sale. Regulation 1.38(a), 17 C.F.R. § 1.38(a) (2014), requires futures contracts to be executed openly and competitively and permits noncompetitive trading only if executed “in accordance with written rules of the contract market which have been submitted to and approved by the Commission, specifically providing for the noncompetitive execution of such transactions.” At no time relevant to this Order did IFUS rules approved by the Commission

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<sup>3</sup> On January 12, 2007, IntercontinentalExchange, Inc. (“ICE”) announced that its merger with NYBOT was complete. Effective September 3, 2007, NYBOT changed its corporate name to IFUS.

permit EFPs, noncompetitive trades, between accounts under common control.<sup>4</sup> By executing sixty-four EFPs opposite each other's cocoa futures trading accounts, which were not independently controlled as required for such transactions, between February 2011 and January 2013, Respondents violated Section 4c(a) of the Act and Regulation 1.38(a).

Section 4i of the Act, 7 U.S.C. § 6i (2012), and Regulation 18.04, 17 C.F.R. § 18.04 (2014), together require every trader who owns, holds, or controls a reportable futures or options position to file with the Commission a "Statement of Reporting Trader" on Form 40 in response to the Commission's special call, to be completed in accordance with the form's instructions. The Form 40 specifically requires a reportable trader to state whether it controls the futures trading of anyone else and whether anyone else controls the trading of the reportable trader. By failing to disclose that their cocoa futures trading accounts were not independently controlled on Olam International's 2010 and 2012 Form 40s and on Olam Americas' 2012 Form 40, Respondents violated Section 4i of the Act and Regulation 18.04.

## **V.**

### **FINDINGS OF VIOLATION**

Based on the foregoing, the Commission finds that Respondents violated Sections 4a(e), 4c(a), and 4i of the Act, 7 U.S.C. §§ 6a(e), 6c(a), and 6i (2012), and Regulations 1.38(a) and 18.04, 17 C.F.R. §§ 1.38(a) and 18.04 (2014).

## **VI.**

### **OFFER OF SETTLEMENT**

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

- A. Acknowledge receipt of 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;

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<sup>4</sup> Effective August 2012, IFUS adopted Rule 4.06, which set out certain exceptions to this general rule in situations sufficiently demonstrating independent control or separate legal ownership such that EFPs are permitted, including between "independently controlled accounts of separate legal entities with the same beneficial owners, provided that the account controllers operate separate business units." Olam International and Olam Americas did not fit within this or any other of the enumerated exceptions.

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 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2014), 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, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), 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;
- 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 Respondents violated Sections 4a(e), 4c(a), and 4i of the Act, 7 U.S.C. §§ 6a(e), 6c(a), and 6i (2012), and Regulations 1.38(a) and 18.04, 17 C.F.R. §§ 1.38(a) and 18.04 (2014);
  2. orders Respondents to cease and desist from violating Sections 4a(e), 4c(a), and 4i of the Act, 7 U.S.C. §§ 6a(e), 6c(a), and 6i (2012), and Regulations 1.38(a) and 18.04, 17 C.F.R. §§ 1.38(a) and 18.04 (2014);
  3. orders Respondents, jointly and severally, to pay a civil monetary penalty in the amount of \$3,000,000, plus post-judgment interest; and
  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 VII of this Order.

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

**VII.**  
**ORDER**

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

- A. Respondents shall cease and desist from violating Sections 4a(e), 4c(a), and 4i of the Act, 7 U.S.C. §§ 6a(e), 6c(a), and 6i (2012), and Regulations 1.38(a) and 18.04, 17 C.F.R. §§ 1.38(a) and 18.04 (2014).
- B. Respondents, jointly and severally, shall pay a civil monetary penalty in the amount of three million dollars (\$3,000,000) within ten (10) days of the date of entry of this Order (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten (10) days of the date of entry of this Order, 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 (2012). Respondents shall pay the CMP Obligation 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:

Commodity Futures Trading Commission  
Division of Enforcement  
ATTN: Accounts Receivables --- AMZ 340  
E-mail Box: 9-AMC-AMZ-AR-CFTC  
DOT/FAA/MMAC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
Telephone: (405) 954-7262

If payment is to be made by electronic funds transfer, Respondents shall contact Nikki Gibson 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 Respondents and the name and docket number of this proceeding. Respondents 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, and to Stephanie Reinhart, Senior Trial Attorney, Commodity Futures Trading Commission, 525 W. Monroe Street, Suite 1100, Chicago, IL 60661.

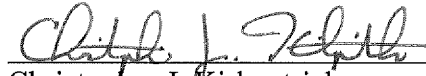
- C. Respondents and their successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondents and their successors and assigns agree that neither they nor any of their agents or employees under their authority or control shall 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 undertake all steps necessary to ensure that all of their agents and 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 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.

**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: January 20, 2015