

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of	:	CFTC Docket No. 00-08
	:	
STEVEN C. BRENNER and	:	OPINION AND ORDER
JAMI WEISNER BRENNER	:	
	:	

In March 2001, an Administrative Law Judge (“ALJ”) issued an order resolving liability and sanctions issues raised in a Complaint alleging that, between 1995 and 1999, respondent Steven C. Brenner (“Brenner”) traded futures contracts on a Commission regulated exchange in violation of Section 8b of the Commodity Exchange Act (“Act”). The Complaint alleged that Brenner’s wife, Jami Weisner Brenner (“Weisner”), aided and abetted his violations within the meaning of Section 13(a) of the Act. The judge concluded that it was appropriate to resolve the Complaint’s allegations without an oral hearing and that the undisputed facts established both that Brenner repeatedly violated Section 8b, and that his wife aided and abetted his violations. He imposed a cease and desist order on both respondents and a civil money penalty of \$100,000 on Brenner. *In re Brenner*, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,499 (ALJ March 20, 2001) (“I.D.”)

The parties have filed cross appeals challenging the ALJ’s decision. Respondents object to certain adverse inferences that the judge drew due to their failure to answer the Complaint or respond to the Division of Enforcement’s (“Division”) requests for admission. In addition, they argue that the ALJ’s liability findings rest on no more than suspicious circumstances. They contend that they were prejudiced by the Division’s failure to fulfill its duty to disclose

exculpatory materials. The Division defends the ALJ's liability analysis and, in its cross appeal, argues that additional sanctions are necessary to deter future violations.

Based on our independent assessment of the record, we conclude that some of the violations alleged in the Complaint may be resolved without an oral hearing. As a matter of decisional efficiency, we dismiss those charges that are not fit for summary disposition. As to the merits, we find that the undisputed facts establish that Brenner committed multiple violations of Section 8b, and that Weiser aided and abetted some of his violations. To deter similar violations in the future, we impose a cease and desist order on both respondents, a \$100,000 civil money penalty on Weiser, and a permanent trading prohibition and \$300,000 civil money penalty on Brenner.

BACKGROUND

I.

This matter has its roots in a 1986 reparations decision ordering Brenner to pay damages for churning a customer's account. *Wagner v. Commonwealth Commodities Corp.*, 1990 WL 282865 CFTC Docket No. 85-R91 (JO Dec. 19, 1986). Brenner failed to satisfy the award. Consequently, in February 1987, the Commission placed him on its Sanctions in Effect List. Pursuant to Section 14(f) of the Act, Brenner was automatically barred from trading on markets regulated by the Commission. *See also* Commission Rule 12.407(c).

Although notified that he was on the Commission's sanctions list and prohibited from trading, Brenner nevertheless proceeded to trade through three futures commission merchants ("FCMs"). In March 1990, the Commission issued a Complaint alleging that Brenner was trading in violation of his extant trading prohibition. When Brenner failed to file an answer, a Commission ALJ held him in default and imposed a cease and desist order, 10-year trading

prohibition, and \$10,000 civil money penalty as sanctions. *In re Brenner*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,914 at 37,315 (ALJ Aug. 16, 1990).¹

In 1992, Brenner opened an account at an FCM in his wife's name. Posing as Weisner, Brenner traded futures contracts on Commission regulated exchanges. In July 1992, the Commission filed an injunctive action against Brenner in the U.S. District Court for the Northern District of Illinois. It alleged that Brenner used a fictitious name to trade futures contracts in violation of the Commission's 1990 order. On July 7, 1992, the district court entered an order of permanent injunction against Brenner. *CFTC v. Brenner*, Civil Action No. 92C-4350 (N.D. Ill.).

During the next two years, Brenner repeatedly violated the court order by trading through two accounts opened by acquaintances. As a result, the U.S. Department of Justice criminally prosecuted Brenner under 18 U.S.C. § 401 for disobeying a lawful order of the Court. In December 1996, Brenner pled guilty to trading in violation of the injunction from July 2, 1993 to December 28, 1994. Brenner was later sentenced to weekend detention for one month and two years' probation. *United States v. Brenner*, 96 CR 763 (N.D. Ill.).

II.

On March 30, 2000, the Commission issued a Complaint alleging that, from January 1995 through October 1999, Brenner traded on markets regulated by the Commission in violation of the Commission's 1990 order imposing a 10-year trading prohibition.² The Complaint also alleged that Weisner willfully aided and abetted Brenner's violations within the meaning of Section 13(a) of the Act.

¹The ALJ's decision became a final Commission order when Brenner failed to appeal. Brenner never paid the civil money penalty.

² Section 8b of the Act states that "[it] shall be unlawful" to trade in contravention of an outstanding trading prohibition.

Neither respondent filed a timely answer.³ In May 2000, the ALJ ordered Brenner and Weisner to show cause why a default judgment should not be entered. Brenner and Weisner responded by filing a joint “answer” that asserted three privileges as a basis for refusing to either admit or deny the Complaint’s allegations: (1) their Fifth Amendment privilege; (2) their privilege against “adverse spousal testimony”; and (3) their privilege protecting “marital confidential communications.”

In July 2000, the Division served Brenner and Weisner with separate requests for admissions.⁴ Respondents invoked the same three privileges as their basis for refusing to respond with admissions or denials.

In October 2000, the Division moved for summary disposition pursuant to Commission Rule 10.91. The Division claimed that undisputed facts established that, while the Commission’s 1990 trading ban was effective, Brenner repeatedly traded futures on markets regulated by the Commission using accounts opened under various assumed names, including the name of his wife. The Division argued that the undisputed facts also showed that Weisner knowingly assisted Brenner’s wrongdoing by opening accounts for him and allowing him to trade under her name.

The Division supported its motion with account documents, deposition testimony, and sworn statements from witnesses who identified Brenner as the person who traded various futures accounts. In addition, the Division’s motion relied on adverse inferences arising from

³Counsel filed a motion to dismiss and motion for a more definitive statement in lieu of an answer.

⁴The Division’s requests for admission were quite specific. For example, the Division asked Brenner to admit that he traded on markets regulated by the Commission in each of the accounts specified in the Complaint. The Division asked Weisner to admit that she was aware that Brenner was subject to a Commission trading prohibition, opened specified accounts so that Brenner could trade on markets regulated by the Commission, and did not trade in the accounts herself, but aided and assisted Brenner’s trading in the accounts.

respondents' refusal to answer the Complaint or respond to discovery. The Division claimed that respondents' reliance upon their Fifth Amendment privilege "at every turn . . . corroborates the other evidence." Div. Br. in Support of Motion for Summary Disp. at 3.

The Division claimed that the undisputed facts established that Brenner opened an account in the name of Ronald Boylan at First Commercial Financial Group, Inc. ("FCFG") in 1993 (the "Boylan Account").⁵ According to the Division, by the time the account was closed in May 1995, there was a \$38,000 deficit arising from Brenner's trading in a variety of contracts, including S&P 500 stock index futures.⁶ The Division claimed that, in order to pay off the resulting debit balance, Brenner, still using Boylan's name, began working as a Peregrine clerk on the night shift. Finally, it argued that an account was opened at Peregrine in Weisner's name eight days after the Boylan Account was closed (the "Weisner-Peregrine Account").

The Division also presented evidence relating to several other accounts: (1) an account opened in Weisner's name at LFG, LLC in May 1995 (the "LFG Account"); (2) two accounts opened in Weisner's name at Spike Trading Co. in April 1997 (collectively, the "Spike Account"); and (3) an account opened in Weisner's name at ED&F Man in December 1997. The Division claimed that undisputed facts established that Brenner traded futures on exchanges regulated by the Commission in these accounts and that he traded with Weisner's knowledge, consent, and assistance. In this regard, the Division argued that testimony of those who knew Weisner well showed that she lacked knowledge of or experience in the futures markets.

⁵ Peregrine Financial Group, Inc. ("Peregrine") became FCFG's successor in interest while the Boylan account was open.

⁶The Complaint did not allege that any trading in this account prior to January 1995 involved wrongdoing by Brenner.

Consequently, it urged the ALJ to infer that facilitating Brenner's scheme was the only plausible reason for Weisner to open futures accounts.

On December 4, 2000, Brenner and Weisner filed a joint opposition to the Division's motion accompanied by a motion of their own for summary disposition.⁷ Respondents did not submit their own affidavits to establish that there were genuine issues of material fact; they relied on the materials submitted by the Division.⁸ They argued that the facts established by the Division's evidence—that Brenner was involved in trading the accounts at issue—could have an innocent explanation. They maintained that, at best, the undisputed facts established that Brenner traded on foreign markets that were not regulated by the Commission and that only Weisner traded on domestic markets. Respondents also attempted to cast doubt on the Division's contention that Weisner lacked knowledge of or experience in the futures markets. In view of these plausible innocent explanations for the facts established by the Division, respondents argued that the record was not sufficiently developed to permit reliable resolution without an oral hearing.⁹

Brenner and Weisner argued that no adverse inferences could be drawn against either of them from their invocation of the Fifth Amendment. Opp. at 15. Respondents also contended that the Division failed to fulfill its obligation to disclose exculpatory information in accordance with the Commission's holdings in *In re First Guarantee Metals, Co.*, [1980-1982 Transfer

⁷The Boylan Account was open during the period covered by the criminal case brought against Brenner for violating the 1992 federal court injunction. Brenner admitted trading the Boylan Account and acknowledged his guilty plea in connection with this misconduct.

⁸Respondents did submit an affidavit executed by former Peregrine employee F. Stephen Helmholtz ("Helmholtz"), but primarily relied on it in the context of their challenge to the Division's production of exculpatory information.

⁹Respondents did, however, move for summary disposition in their own favor. In this regard, they emphasized that the Division did not have evidence of facts material to the violations alleged in the Complaint.

Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,074 (CFTC July 2, 1980) (“*First Guarantee*”), and *In re First National Monetary Corp.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,853 at 27,582 (CFTC Nov. 13, 1981) (“*FNMC*”). Specifically, they claimed that the Division did not disclose: (1) a statement corroborating their claim that Brenner traded only on foreign exchanges, while Weisner traded on domestic markets;¹⁰ and (2) drafts of the signed witness statements produced by the Division.¹¹

The Division submitted drafts of three signed witness statements as well as notes taken by Division staff during conversations with one of its declarants for *in camera* review by the ALJ. Based on his review, the ALJ found that the Division had not failed to disclose exculpatory information material to liability or sanctions.

III.

The ALJ issued his decision resolving liability issues and sanctions in March 2001. After reviewing the procedural history and the nature of the Complaint’s substantive allegations, the ALJ discussed respondents’ invocation of privileges as a basis to refuse to answer the Complaint’s allegations or respond to requests for admission. In this regard, the ALJ noted that the two marital privileges that respondents relied upon were only applicable in the criminal context. I.D. at 51,706. Similarly, the judge held that Brenner and Weisner could not assert their Fifth Amendment privilege in the context of an administrative proceeding. *Id.*

The ALJ then noted that Brenner had not submitted any evidence controverting the Division’s proof that he posed as Weisner and was the only person to trade the Spike Account.

¹⁰This statement allegedly was made by Helmholz in an interview with Division counsel. Division counsel denied that Helmholz revealed any exculpatory information during the interview.

¹¹ Respondents claimed that the drafts could be important because the witnesses might have included information that corroborated respondents’ theory that Brenner only traded on foreign markets.

He also pointed out that Brenner did not submit any evidence controverting the Division's proof related to trading in the LFG Account. The ALJ acknowledged that Brenner claimed that the Division's evidence did not negate the possibility that Weisner traded the domestic futures contracts in these accounts. He emphasized, however, that this "theoretical possibility" did not justify a denial of summary disposition. *Id.*

Having determined that there were no genuine disputes over material facts, the judge enumerated 49 findings of fact. These findings essentially summarized the evidence that the Division had submitted, but did not address key factual issues such as whether Brenner traded futures regulated by the Commission in the accounts, whether Weisner was aware that Brenner was subject to a Commission trading prohibition but continued to trade futures regulated by the Commission, and whether Weisner acted to further Brenner's scheme to evade the trading prohibition. *Id.* at 51,707-09.

The ALJ then listed six conclusions of law. He concluded that Brenner had violated Section 8b of the Act by trading the "Boylan Account," the "Weisner-Peregrine account," the "LFG account," and the "Spike account." *Id.* at 51,709. He generally concluded that Weisner willfully aided and abetted "Brenner's violations of Section 8b." *Id.*

At the end of his decision, the ALJ summarized his conclusions in six paragraphs grouped under the heading "**ORDER.**" These indicated that the ALJ was granting the Division's motion for summary disposition as to Brenner only as it related to trading in the "Boylan Account," "Weisner-Spike Account," and "LFG Account." They indicated that the ALJ was granting the motion as to Weisner as it related to "Brenner's trading of the Spike and LFG Accounts." Finally, these paragraphs indicated that the ALJ imposed a cease and desist

order against both respondents and a \$100,000 civil money penalty against Brenner. *Id.* at 51,709-10.

IV.

Both sides filed timely notices of appeal.¹² Brenner and Weisner center their appeal on their contention that the record does not support the ALJ's liability findings. In particular, they emphasize that the Division has not successfully negated a plausible, innocent explanation for its evidence—*i.e.*, that Brenner traded only on markets that the Commission does not regulate. They also claim that the ALJ erred when he ruled that they could not invoke their Fifth Amendment privilege in the context of an administrative proceeding. Finally, Brenner and Weisner renew their claim that the Division withheld exculpatory information.

The Division limits its appeal to the adequacy of the sanctions that the ALJ imposed.

DISCUSSION

I.

The ALJ's decision is difficult to interpret. On the one hand, it appears that the judge intended to hold that Brenner violated the Commission's 1990 trading prohibition by executing trades in four different accounts. In summarizing his holdings, however, the ALJ indicated that he was basing Brenner's liability on trading in three accounts. Similarly, at one point in the decision it appears that the judge intended to hold that Weisner aided and abetted violations arising out of trading in four accounts. In summarizing his holdings, however, the ALJ indicated that he was basing Weisner's liability on trading in only two accounts.

¹²Respondents' motion to dismiss the Division's appeal is denied. The arguments made to support the motion lack merit and do not require extended discussion.

None of the parties have chosen to address this ambiguity in the ALJ's decision. While in some circumstances a remand for clarification would be appropriate, we have taken a different tack in this case. We have undertaken *de novo* review of the record and have identified those allegations that may be reliably resolved without a hearing.¹³ These allegations all relate to trading in accounts as to which the ALJ granted summary disposition. While our analysis of liability differs from that of the ALJ, the scope of our liability findings is no broader than his. Accordingly, respondents are not prejudiced by our *de novo* review of the factual record. We turn then, to our *de novo* evaluation of the evidence material to allegations relating to Brenner's admitted trading of the Boylan Account at FCFG, and his alleged trading in accounts maintained at Spike and LFG.

II.

We begin by acknowledging that adverse inferences arising from respondents' invocation of their Fifth Amendment privilege can play only a limited role in our analysis. Adverse inferences are clearly appropriate because respondents' refusal to answer the Complaint or respond to requests for admission have clearly prejudiced the Division's ability to develop the record in this case. Our own precedent recognizes, however, that "it is impermissible to punish the invocation of the Fifth Amendment privilege by inferring liability directly from an individual's refusal to waive his privilege." *In re Buckwalter*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,995 at 37,687 (CFTC Jan. 25, 1991). *See also Baxter v.*

¹³Under Commission Rule 10.91, summary disposition is appropriate only when the moving party establishes that: (1) there is no genuine issue as to any material fact; (2) there is no need to develop more facts on the record; and (3) such party is entitled to a decision as a matter of law. Recognizing the valuable role that an opportunity for cross-examination can play in assuring reliable fact finding, our precedent holds that summary disposition is not appropriate when there is "any significant doubt that the parties' dispute can be reliably resolved without a hearing." *In re Zuccarelli*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,597 at 47,833 n.12 (CFTC April 15, 1999).

Palmigiano, 425 U.S. 308, 317 (1976) (Fifth Amendment silence by itself insufficient to support an adverse decision in civil proceeding).

Commission precedent nevertheless recognizes that a respondent's invocation of a Fifth Amendment privilege can justify an adverse inference in appropriate circumstances. *Buckwalter*, ¶ 24,995 at 37,687. Our precedent draws a distinction between situations where Fifth Amendment silence by itself is treated as an admission of wrongdoing, and situations where the negative inference flowing from such silence is combined with other evidence adverse to respondent. *In re Citadel Trading Co.*, [1986-87 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,082 at 32,189 (CFTC May 12, 1986).¹⁴ It is permissible to rely on an adverse inference when respondent's silence is only one of a number of factors and is given no more weight than is warranted by the record. *See Citadel Trading*, ¶ 23,082 at 32,189 (quoting *Lefkowitz v. Cunningham*, 431 U.S. 801, 808 n.5 (1977)).

With these principals in mind, we turn to the independent sources of evidence that the Division relies upon.

III.

The "Boylan" Account at FCFG

Brenner's culpability with respect to the Boylan Account is not at issue. He admits trading this account during the period germane to the Complaint (from and after January 1995). *See Brenner App. Br.* at 14. Accordingly, he does not contest the ALJ's grant of summary

¹⁴*Compare Buckwalter*, ¶ 24,995 at 37,687 (impermissible to infer liability directly and solely from an individual's refusal to waive Fifth Amendment privilege), *with In re Lincolnwood*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,986 at 28,252 n.97 (CFTC Jan. 31, 1984) (adverse inference drawn from respondent's decision "not to testify and refusal to explain circumstances attending" his violative conduct when confronted with evidence against him).

judgment with respect to the Boylan Account. We affirm that aspect of the ALJ's order without extended discussion.

The Spike Account

The undisputed facts show that during April 1997, two accounts were opened in Weisner's name at Spike; her signature appears on account opening documents. Thereafter, the Division argues, Brenner, identifying himself as "Jami Weisner," called in trades for these accounts, including S&P 500s and E-Mini S&Ps. According to the Division, Brenner was the only person who traded the accounts or otherwise dealt with matters pertaining to them. In support of its argument, the Division relies primarily on declarations by Spike Trading Co. Vice President Steven Good, and employee Joseph Brusca.

Good testified about his dealings with a man that he knew as "Jimmy Weisner," Tab 11 at 10, who traded "all the time" and "at all hours." *See Exhibits Supporting the Division's Motion for Summary Disposition ("Div. Exh."),* Tab 11 at 11. According to Good, "Jami Weisner" traded both foreign and "U.S. markets." Tab 11 at 16. Likewise, Brusca's testimony established that Brenner deceptively posed as "Jami Weisner," Div. Ex. Tab 10 at 10, and Tab 20, and that he traded "S&P futures." Tab 10 at 12.

Respondents argue that this testimony is inadequate to establish that Brenner traded on markets regulated by the Commission. Resp. App. Br. at 20-21. The testimony, however, establishes a direct link between Brenner and violative activity.¹⁵ Combined with Brenner's

¹⁵Good specifically identified the types of markets that Brenner traded in:

Q. You mentioned that Weisner traded at all hours?

A. Yes. He traded the—I specifically remember he was—in the last part of our relationship I think he was trading foreign markets, European. I don't know about Asia, but European.

Continued

silence, and his well-documented efforts to conceal his activities, we conclude there is a sufficient basis to infer that Brenner traded domestic futures in these accounts in violation of his trading ban.

The LFG Account

The undisputed facts also show that an account was opened in Weisner's name at LFG in May 1995. The Division argues that Brenner opened the account and traded futures regulated by the Commission in it while posing variously as Weisner or Boylan. Finally, it claims that Weisner was well aware of Brenner's trading in the LFG Account.

The Division relies upon a declaration by LFG employee Luigi Auriemma, indicating that Brenner traded this account, identifying himself as "Ron Boylan," Div. Ex. 17 at ¶ 4; a declaration by another LFG employee establishing that Brenner falsely identified himself on different occasions as Ron Boylan and as Weisner, Div. Ex. 18¹⁶; and a declaration by a handwriting expert expressing his opinion that the signature on this account was prepared by someone other than Weisner. Div. Ex. 23, ¶ 5(b).

Although the latter two declarations establish little more than Brenner's efforts to hide his true identity, the Auriemma declaration links him to trading in that account. DX 17 at ¶ 4.

Q. Prior to that time what was he trading?

A. U.S. Market. U.S. Markets.

Q. Do you remember in particular if he had any favorites that he traded?

A. I don't remember specifically.

Div. Ex., Tab 11 at 15-16. Brusca corroborated Good's testimony. Asked what Brenner traded, Brusca stated: "Mostly foreign indices. I believe, S & Ps and foreign indices. The German Dax and the French Cac." Tab 10 at 12.

¹⁶LFG employee Christine Scalziti ("Scalziti") stated that she had known Brenner previously as Ron Boylan. She declared that she overheard a call to another LFG employee that was transmitted by speakerphone from a man who identified himself as Weisner, and recognized the voice to be that of the man she knew as Boylan, Div. Ex 18.

Moreover, the LFG Account statements show that stock index futures traded on markets regulated by the Commission were actively traded in this account. *See* DX 16. Finally, there is reliable evidence supporting an inference that Brenner engaged in deception to evade detection. Combined with Brenner’s refusal to respond to or offer any explanation for the Division’s evidence, we conclude that the Division has met its burden in establishing that Brenner traded the LFG Account in violation of the 1990 order.

Aiding and Abetting

In order to sustain an allegation of aiding and abetting under Section 13(a) of the Act, the Division must establish both a respondent's knowledge of the underlying wrongdoing and intentional assistance. *Buckwalter*, ¶ 24,995 at 37,686. The Division maintains that it has made the requisite showing, citing evidence that Weisner was aware of both the Commission’s restrictions upon her husband’s trading and Brenner’s trading activities in contravention of the restrictions. It also emphasizes evidence that she sought to assist his efforts to conceal his activities from official scrutiny.

LFG employee Luigi Auriemma, who solicited the LFG Account for his firm, stated in a declaration that, based on a series of contacts with Brenner and Weisner—including calls to the Brenner residence—he believed that Brenner traded the LFG Account, and that Weisner was aware of this. Div. Ex. 17 ¶ 4. (Auriemma, who met Brenner at Peregrine, originally knew him as “Ron Boylan,” the name Brenner used there.) Auriemma’s statement, considered in conjunction with Weisner’s silence, raises an inference that she was aware of her husband’s wrongful trading of this account. *See Lincolnwood*, ¶ 21,986 at 28,252 n.97. By failing to take steps to halt his misuse of her identity, Weisner assisted his efforts to evade detection. In these

circumstances, the undisputed facts establish that Weisner aided and abetted her husband's wrongdoing with respect to the LFG account.

IV.

Respondents contend that the Division failed to comply with its obligation to produce exculpatory information. Our review of the record establishes that these claims are, at best, speculative.¹⁷ In any case, respondents have not shown that any of the alleged breaches of the Division's obligations prejudiced them. Indeed, since respondents were able to submit an affidavit from the person who allegedly informed the Division of some of the exculpatory information allegedly withheld, there is no plausible basis for inferring that this aspect of the Division's alleged misconduct harmed respondents.

V.

Sanctions in enforcement proceedings are imposed "to further the Act's remedial policies and to deter others in the industry from committing similar violations." *In re Volume Investors Corp.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,234 at 38,679 (CFTC Feb. 10, 1992). In determining the sanctions appropriate for the violations established in a particular case, the Commission takes into account the ALJ's assessment of the gravity of respondents' violations as well as the sanctions imposed in the initial decision. Nevertheless, its choice of sanctions is based on a *de novo* review of all relevant factors established on the record. *In re Grossfeld*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,921 at 44,467 (CFTC Dec. 10, 1996), *aff'd sub nom. Grossfeld v. CFTC*, 137 F.3d 1300 (11th Cir. 1998).

¹⁷The respondents offer nothing tangible in support of their claim that the ALJ erred in his *in camera* review of the information submitted by the Division. Our precedent clearly recognizes that such review is an appropriate tool for resolving disputes without compromising confidentiality. See *First Guaranty Metals Co.*, ¶ 21,074 at 24,341.

Determining the gravity of a respondent's violations involves several related inquiries.¹⁸ The first focuses on the underlying conduct's relationship to the regulatory purposes of the Act. *In re Premex*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,165 at 34,890 (CFTC Feb. 17, 1988). Generally, violations of the “core provisions” of the Act, such as defrauding customers, warrant more serious sanctions. *Id.*

The second inquiry focuses on the facts and circumstances of the particular case. In making this inquiry, the Commission often considers whether a respondent’s conduct was knowing and whether the respondent cooperated with authorities following discovery of his violations or undertook other steps to ameliorate the harm flowing from the violations. *Grossfeld*, ¶ 26,921 at 44,467-44,468 and nn.29 & 31; *Premex*, ¶ 24,165 at 34,891. In addition, the Commission looks at the negative consequences flowing from the violative conduct, including the duration of the violative conduct, the financial benefit to respondent, and the extent of financial harm, if any, to customers. *Grossfeld*, ¶ 26,921 at 44,468 and n.30.

The violations at issue here threaten the Commission’s primary tool for protecting the integrity of the market mechanism.¹⁹ Consequently, their gravity is always quite high. In the instant case, Brenner routinely ignored his obligation to comply with the Commission’s trading prohibition and Weisner assisted his scheme to deceive Commission registrants so that he could avoid detection. Neither has made any effort to cooperate with authorities. Indeed, Brenner insists that he is the victim of a vendetta by the Division. Lower, incremental sanctions have

¹⁸Gravity refers to the seriousness of a violation. *In re Gordon*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,667 at 40,180-81 (CFTC Mar. 16, 1993).

¹⁹It is not necessary to precisely calculate the number of violations committed by respondents. We note, however, that every day that Brenner traded on markets regulated by the Commission in the Boylan, Spike or LFG Accounts would be a separate violation of Section 8b. As an aider and abettor of the violations arising out of Brenner’s trading of the LFG Account, Weisner is equally responsible for every day of Brenner’s trading in the LFG Account.

proved completely ineffective at deterring additional violations by Brenner. Consequently, especially severe sanctions are appropriate.

Because both respondents acted knowingly, a cease and desist order is clearly appropriate. Moreover, to protect the integrity of the market mechanism, imposition of a lifetime trading prohibition on Brenner is not only warranted, but necessary. Finally, in view of the severity of the violations, and in order to deter future misconduct, we impose a \$300,000 civil money penalty on Brenner and a \$100,000 civil money penalty on Weisner.

CONCLUSION

In light of this analysis, we find that Brenner violated Section 8b of the Act by trading on markets regulated by the Commission through the Boylan Account maintained at FCFG and its successor, Peregrine; and through accounts maintained in Weisner's name at Spike and LFG. We find that Weisner aided and abetted Brenner's violations of Section 8b relating to trading in the account maintained at LFG. We dismiss the charges in the Complaint and vacate the ALJ's liability findings that relate to trading in other accounts.

As to sanctions, we impose a cease and desist order and \$100,000 civil money penalty on Weisner; and a cease and desist order, permanent trading prohibition, and \$300,000 civil money

penalty on Brenner. These sanctions shall become effective on the 30th day following the date this order is served.²⁰

IT IS SO ORDERED.

By the Commission (Chairman NEWSOME and Commissioners HOLUM, ERICKSON, LUKKEN, and BROWN-HRUSKA).

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

Dated: October 2, 2002

²⁰A motion to stay the effect of these sanctions pending reconsideration by the Commission or review by a court must be filed within 15 days of the date this order is served.