U.S. COMMODITY FUTURES TRADING COMMISSION
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In the Matter of	*	
	*	
RISK CAPITAL TRADING GROUP, INC.	*	CFTC Docket No. SD 06-04
	*	
Registrant.	*	
	*	

INITIAL DECISION

Registrant Risk Capital Trading Group, Inc. ("Risk Capital") has not responded to the Commission's notice of intent to revoke its registration[1] even though the Proceedings Clerk properly served the pleading.[2] Thus, the

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[1] Order, dated October 3, 2006, at 2; Notice of Intent to Revoke Registration Pursuant to Sections 8a(2)(C) and (E) of the Commodity Exchange Act, as Amended, dated September 1, 2006 ("Notice"). Risk Capital is registered as an introducing broker. Notice at 1. In the Notice, the Division of Enforcement alleged that Risk Capital is subject to statutory disqualification pursuant to Section 8a(2)(C) and (E) of the Commodity Exchange Act, 7 U.S.C. §12a(2)(C), (E). Id. at 4-5.

[2] This proceeding is conducted pursuant to Rule 3.60, 17 C.F.R. §3.60. Rule 3.50, 17 C.F.R. §3.50, governs service in Rule 3.60 proceedings. 17 C.F.R. §3.50. Rule 3.50(a) permits service by a number of methods but lists only one method as per se sufficient by stating, "service upon an applicant or registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the applicant or registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing." 17 C.F.R. §3.50(a). On September 1, 2006, the Proceedings Clerk sent the Notice by United States Postal Service certified mail to 3350 Riverwood Parkway, Suite 1560, Atlanta, Georgia 30339 and 19495 Biscayne Boulevard, Suite 607, Aventura, Florida 33180. Declaration of Tempest S. Thomas Pursuant to 28 U.S.C. §1746, dated December 5, 2006, at 1-2 (attached as Exhibit 3 to Division of Enforcement's Amended Memorandum of Law in Support of its Amended Motion for Entry of Order of Default, Findings of Fact, Conclusions of Law and Revocation of the Registration of Risk Capital Trading Group, Inc., filed December 6, 2006 ("Division's Memorandum")).

(continued..)

registrant is in default.[3] Given these circumstances, the Division of Enforcement's motion for a default judgment[4] only requires us to determine whether the Division has adequately demonstrated Risk Capital's statutory disqualification pursuant to Section 8a(2)(C) or 8a(2)(E).[5] If we conclude that the firm is disqualified under either provision, then Risk Capital will be found to be conclusively unfit for registration.[6]

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These addresses were both listed as those of the firm on its registration application, as most recently amended, then on file with the National Futures Association. Declaration of Sandra A. Guard Pursuant to 28 U.S.C. §1746, dated November 16, 2006, at 2-3 (attached as Exhibit 1 to the Division's Memorandum). Consequently, service was proper and completed on September 1st, and Risk Capital's response was due by October 4, 2006. 17 C.F.R. §§3.50(a), 3.60(a)(3); In re Buckwalter, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,609 at 39,893 n.2 (CFTC Dec. 10, 1992).

[3] When it did not respond to the Notice in a timely fashion, Risk Capital automatically fell into default. 17 C.F.R. §3.60(a)(4).

[4] Division of Enforcement's Amended Motion for Entry of Order of Default, Findings of Fact, Conclusions of Law and Revocation of the Registration of Risk Capital Trading Group, Inc., filed December 6, 2006. Risk Capital has not responded to the Division's motion.

[5] Rule 10.93, 17 C.F.R. §10.93, governs the disposition of Rule 3.60 default judgment motions. 17 C.F.R. §3.60(g). In determining whether it is appropriate to issue a default judgment under this regulation, we take as true a notice of intent's well-pled allegations of fact, as augmented by any evidence the Division may submit in support of the motion, and draw our own legal conclusions. In re Collins, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,607 at 55,621 (CFTC Nov. 4, 2003).

[6] Generally, the Division must establish the grounds for statutory disqualification by a preponderance of the evidence. 17 C.F.R. §3.60(e); Cf. In re Gath, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,751 at 44,111 (CFTC Aug. 2, 1996). Once the Division satisfies this requirement, a registrant is deemed presumptively unfit for registration and the burden of

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Section 8a(2)(C) permits this agency to revoke the registration of any person who is permanently enjoined by a court order, "including an order entered pursuant to an agreement of settlement to which the Commission . . . is a party," from "engaging in or continuing any activity where such activity involves . . . fraud."[7] Similarly, Section 8a(2)(E) authorizes revocation in cases where the registrant "has been found, within ten years preceding the filing of an application for registration or any time thereafter," in a proceeding "brought by the Commission . . . or by agreement of settlement to which the Commission . . . is a party" to have violated any provision of the Commodity Exchange Act

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proof shifts. 17 C.F.R. §3.60(e)(1)-(2); In re Hirshberg, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,573 at 43,522 (CFTC Dec. 27, 1995). To overcome the presumption of unfitness arising out of 7 U.S.C. §12a(2), the registrant must show by clear and convincing evidence that it does not pose a substantial threat to the public if permitted to remain registered. 17 C.F.R. §3.60(e)(1); Hirshberg, [1994-1996 Transfer Binder] ¶26,573 at 43,522. To make this showing, a registrant must present "[e]vidence mitigating the seriousness of the wrongdoing underlying the . . . disqualification" and/or evidence that the "registrant has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification" 17 C.F.R. §3.60(f)(1)-(2). See In re Horn, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,731 at 33,889 (CFTC July 21, 1987). (In certain cases not here applicable, the registrant must also present evidence of adequate supervision. 17 C.F.R. §3.60(f)(3).) A registrant preserves the right to show that its continued licensure would pose no substantial risk to the public despite the existence of one or more statutory disqualifications by stating, in a response to the notice of intent, an intent to make such a showing. 17 C.F.R. §3.60(b)(2)(i). Here, Risk Capital's default precludes it from introducing evidence of rehabilitation or mitigation. Thus, if we find the registrant to be statutorily disqualified, the resulting presumption of unfitness will be conclusive.

[7] 7 U.S.C. §12a(2)(C).

or any regulation thereunder where such violation involves fraud.[8] Our analysis of the record begins with the Notice and, because the Division's other submissions do not render its relevant claims ill-pled, the pleading forms an adequate basis for our decision.

The following allegations are well-pled and we take them to be true. On September 3, 2003, the Commission filed a complaint in the United States District Court for the Northern District of Georgia.[9] The pleading included allegations that Risk Capital had fraudulently solicited customers to open accounts that were to be used for trading options on futures contracts.[10] On June 16, 2006, the District Court entered a consent order, finding that Risk Capital violated the anti-fraud provisions of 17 C.F.R. §33.10(a) and (c)[11]

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[8] 7 U.S.C. §12a(2)(E).

[9] Notice at 1-2.

[10] Id.

[11] 17 C.F.R. §33.10 states, in relevant part,

> It shall be unlawful for any person directly or indirectly:
>
> (a) To cheat or defraud or attempt to cheat or defraud any other person;
>
> . . . .
>
> (c) To deceive or attempt to deceive any other person by any means whatsoever
>
> in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction.

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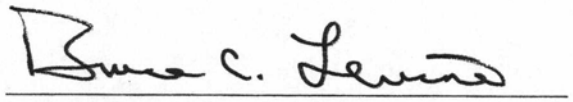
through fraudulent solicitations (that took place from at least January, 2001 to September 2003) and permanently enjoining the firm from subsequently engaging in certain types of fraud that would violate subsections (a) and (c) of Rule 33.10.[12] Thus, the Notice's well-pled allegations of fact establish grounds for disqualification under Section 8a(2)(C) and 8a(2)(E).

Because Risk Capital is statutorily disqualified pursuant to Section 8a(2)(C) and 8a(2)(E), it is unfit for registration.[13] Accordingly, we **GRANT** the Division's motion for a default judgment and **REVOKE** Risk Capital's registration as an introducing broker.

IT IS SO ORDERED.[14]

On this 20th day of December, 2006



Bruce C. Levine
Administrative Law Judge

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See In re Staryk, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,206 at 45,810 (CFTC Dec. 18, 1997).

[12] Notice at 2-3.

[13] See supra note 6.

[14] Any party may appeal this initial decision to the Commission by filing a notice of appeal with the Proceedings Clerk within 15 days of the date upon which this order is served. 17 C.F.R. §§3.60(i)(1), 10.102(a). If no party files a notice of appeal and the Commission chooses not to place the case on its docket for review sua sponte, this initial decision shall automatically become the final decision of the Commission 30 days after service. 17 C.F.R. §3.60(i).