U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581

In the Matter of	*	
M25 INVESTMENTS, INC. and M37 INVESTMENTS, LLC,	*	CFTC Docket No. SD 11-01
Registrants.	*	

INITIAL DECISION

Registrants M25 Investments, Inc. ("M25"), and M37 Investments, LLC ("M37"), have not responded to the Commission's notice of intent to suspend, revoke or restrict their registrations[1] even though the Proceedings Clerk properly served the pleading.[2] When they did not respond to the Notice in a

[1] Notice of Intent to Suspend, Revoke or Restrict the Registrations of M25 Investments, Inc., and M37 Investments, LLC, dated February 23, 2011 ("Notice"). M25 and M37 are registered as Commodity Trading Advisors. *Id.* at 1. The Notice sets forth allegations that the registrants are 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 1-4.

[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. 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 February 24, 2011, the Proceedings Clerk sent the Notice separately to M25 and M37 by certified mail addressed to 1200 Kingdom Circle, Waxahachie, Texas 75167. Declaration of Tempest S. Thomas Pursuant to 28 U.S.C. §1746, dated April 20, 2011, ¶2a-c (attached as Exhibit 4 to Division of Enforcement's Memorandum of Law in Support of its Motion for Entry of Order of Default, Findings of Fact, Conclusions of Law and Revocation of the Registration [sic] of M25 Investments, Inc. and M37 Investments, LLC, filed April 20, 2011 ("Division's Memorandum")). This address was listed as

(continued..)

timely fashion, M25 and M37 automatically fell into 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 the registrants' statutory disqualification pursuant to Section 8a(2)(C) or Section 8a(2)(E).[5] If the registrants are disqualified under either provision, then they will be found to be conclusively unfit for registration.[6] Our

---

(..continued)

that of both firms on their registration applications then on file with the National Futures Association. Division's Memorandum, Exhibits 2-3. Consequently, service was proper and completed on February 24th and M25's and M37's responses were due by March 29, 2011. 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] 17 C.F.R. §3.60(a)(4).

[4] Division of Enforcement's Motion for Entry of Order of Default, Findings of Fact, Conclusions of Law and Revoacation [sic] of the Registration [sic] of M25 Investments Inc. [sic] and M37 Investments, LLC, filed April 20, 2011. M25 and M37 have 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 a default judgment is appropriate, 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 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

(continued..)

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 29, 2009, the Commission filed a complaint in the United States District Court for the Northern District of Texas.[7] The pleading included allegations that M25 and M37 fraudulently solicited customers.[8] On October 25, 2010, the District Court entered a consent order, finding in relevant part that M25 and M37 violated the anti-fraud provisions of 7 U.S.C. §§6b(a)(1)(A)-(C), 6(b)(a)(2)(A)-(C), 6c(b), 6o(1) and 17 C.F.R. §32.9(a)-(c) and permanently enjoined the firms from – among other things – further violating these

---

(..continued)

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" (and, in certain cases not here applicable, evidence of adequate supervision). 17 C.F.R. §3.60(f)(1)-(3). *See In re Horn*, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,731 at 33,889 (CFTC July 21, 1987). 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, M25's and M37's defaults preclude them from introducing evidence of rehabilitation or mitigation. Thus, if we find them to be statutorily disqualified, the resulting presumption of unfitness will be conclusive.

[7] Notice at 1-2.

[8] *Id.* at 2.

provisions.[9] Thus, the Notice's well-pled allegations of fact establish grounds for disqualification under Section 8a(2)(C)[10] and 8a(2)(E).[11]

Because M25 and M37 are statutorily disqualified pursuant to Section 8a(2)(C) and 8a(2)(E), they are unfit for registration.[12] Accordingly, we **GRANT** the Division's motion for a default judgment and **REVOKE** M25's and M37's registrations as Commodity Trading Advisors.

IT IS SO ORDERED.[13]

On this 4th day of May, 2011

Bruce C. Levine
Administrative Law Judge

---

[9] *Id.* at 2-3.

[10] Section 8a(2)(C), in relevant part, 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 U.S.C. §12a(2)(C).

[11] Section 8a(2)(E), in relevant part, authorizes revocation in cases where the registrant has been found, "within ten years preceding the filing of the application [for registration] or at 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 or any regulation thereunder where such violation involves fraud. 7 U.S.C. §12a(2)(E).

[12] *See supra* note 6.

[13] Any party may appeal this initial decision to the Commission by filing a notice of appeal with the Proceedings Clerk within 18 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).