

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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**11:56 am, Aug 19, 2015**

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In the Matter of: )

INTL FCStone Markets, LLC )

Respondent. )

) CFTC Docket No. 15 -27  
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)

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

**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that since at least January 2013 through July 21, 2013 (the “Relevant Period”), INTL FCStone Markets, LLC (“IFCS” or “Respondent”) violated Commission Regulation (“Regulation”) 23.602, 17 C.F.R. § 23.602 (2014). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

**II.**

In anticipation of the institution of this administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.<sup>1</sup>

<sup>1</sup> Respondent consents 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 Respondent does 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 does Respondent 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.

### III.

The Commission finds the following:

#### A. SUMMARY

Respondent violated Regulation 23.602, 17 C.F.R. § 23.602 (2014), when it failed to diligently supervise limited purpose traders (“LPTs”)<sup>2</sup> in its Kansas City Energy Group (the “KCEG”), failed to implement existing policies and procedures regarding discretionary trading, and failed to enforce its own policies regarding the application of mark-ups to customer transactions.

Respondent has cooperated with the Division of Enforcement (“Division”) during its investigation. In addition, Respondent has cooperated with, implemented, and continues to implement several of the recommendations provided by the Division of Swap Dealer and Intermediary Oversight (“DSIO”) during its review of Respondent’s internal controls.

#### B. RESPONDENT

Respondent is registered with the Commission (NFA ID 0449652) as a swap dealer (provisionally, effective December 31, 2012). Respondent is a subsidiary of INTL FCStone Inc., which is a financial services company incorporated in Delaware and headquartered in New York. INTL FCStone Inc. is a publicly held company traded on the NASDAQ.

#### C. FACTS

During the Relevant Period, Gregory Evans (“Evans”), then employed in Respondent’s KCEG as an AP, entered into energy swap agreements on behalf of IFCS with its customers. He also entered into futures trades on behalf of IFCS to hedge the risk from these swap agreements. He handled both discretionary accounts, an arrangement where a broker has power of attorney, usually a written agreement to buy and sell without prior approval, and non-discretionary accounts, an arrangement where a broker has to obtain prior approval to buy and sell a particular contract.

Evans engaged in thirty (30) unauthorized trades in a non-discretionary customer account during the Relevant Period. Evans also applied large “reverse mark-ups” to bilateral swap agreement transactions in order to disguise these unauthorized trades.

“Reverse mark-ups” reference the price of a hedge contract entered into by IFCS, in which it provided the customer with better prices than the actual prices at which Respondent entered into the underlying hedge transactions. A reverse mark-up resulted in gains for customers and corresponding losses for Respondent. This practice assisted Evans in disguising his unauthorized trading and increasing his own compensation.

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<sup>2</sup> An “LPT” is a broker who performs both sales and trade execution functions, *i.e.* in limited instances swaps traders were permitted to execute trades in IFCS’s name, and also hedge those transactions with futures trades.

Respondent failed to diligently supervise Evans and the other LPTs in the KCEG as it (i) provided inadequate oversight of Evans and the other LPTs; (ii) lacked adequate policies and procedures to ensure that discretionary trading of customer accounts was appropriate and properly controlled; and (iii) failed to implement policies and procedures already in place.

For example, LPTs often obtained verbal authorization to enter into discretionary trades, although IFCS's written compliance procedures required written authorization if an LPT exercised discretion over customer trades. Moreover, IFCS did not have sufficient procedures or controls in place to monitor discretionary trading during the Relevant Period. Although IFCS's policies and procedures provided for an individual with supervisory duties to work on the KCEG "Swaps Sales desk," LPTs' trading activities were not closely or regularly monitored by supervisors. Finally, Respondent failed to adequately monitor compliance with, and enforce, its own procedures, which purported to require that mark-ups and reverse mark-ups applied to customers be within a predetermined range.

Respondent's lack of supervision contributed to Evans engaging in unauthorized trading for a period of several months without detection. Ultimately, however, the losses and resultant pressure on Evans mounted, culminating with his July 21, 2013 resignation from IFCS.

Respondent has been cooperative with DSIO throughout the course of its review and is finalizing implementation of DSIO's recommendations. Respondent reimbursed its customers more than \$1.2 million for the identified losses in their accounts. IFCS also suffered losses from the reverse mark-ups Evans applied to customer accounts.

#### IV. LEGAL DISCUSSION

Regulation 23.602(a) requires that swap dealers and major swap participants

establish and maintain a system to supervise, and shall diligently supervise, all activities relating to its business performed by its partners, members, officers, employees, and agents (or persons occupying a similar status or performing a similar function). Such system shall be reasonably designed to achieve compliance with the requirements of the Commodity Exchange Act and Commission regulations.

17 C.F.R. § 23.602(a) (2014).

The operative language of Regulation 23.602(a) is similar to the language of the Commission's longstanding supervision regulation, Regulation 166.3, 17 C.F.R. § 166.3 (2014), and its case law is therefore instructive. Regulation 166.3 has been interpreted as requiring that, in order to establish a failure to supervise, the Commission establish that a registrant's supervisory system was generally inadequate or that the registrant failed to perform its supervisory duties diligently. *See, e.g., In re Murlas Commodities*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,485 at 43,161 (CFTC Sept. 1, 1995); *In re Paragon Futures*

*Assoc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992).

Regulation 23.602(b) defines a “supervisory system” as one that, at a minimum, provides for:

- (1) [t]he designation, where applicable, of at least one person with authority to carry out the supervisory responsibilities of the swap dealer or major swap participant for all activities relating to its business as a swap dealer or major swap participant.
- (2) [t]he use of reasonable efforts to determine that all supervisors are qualified and meet such standards of training, experience, competence, and such other qualification standards as the Commission finds necessary or appropriate.

17 C.F.R. § 23.602(b) (2014).

Respondent failed to diligently supervise the activities of its swap dealer business in violation of Regulation 23.602. Specifically, there was inadequate supervision of the junior LPTs and trading activity of the KCEG. Although Respondent had some written procedures regarding discretionary accounts and mark-ups, IFCS failed to enforce those policies, and thus failed to perform its supervisory duties diligently. Evidence of violations that “should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly” is probative of a failure to supervise. *Paragon Futures*, ¶ 25,266 at 38,850.

Similarly, Respondent lacked a system to monitor mark-ups and reverse mark-ups on trades, or compliance with the procedures it purportedly adopted in May 2013 regarding minimum and maximum mark-ups.

## **V. FINDINGS OF VIOLATION**

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent failed to supervise its employees and agents diligently by establishing, implementing, and executing an adequate supervisory structure and compliance programs in violation of Regulation 23.602, 17 C.F.R. § 23.602 (2014).

## **VI. OFFER OF SETTLEMENT**

Respondent has submitted the Offer in which it, without admitting or denying the findings and conclusions herein:

- A. Acknowledges receipt of service of this Order;

- B. Admits 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. Waives:
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 it 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 Commission's Regulations, 17 C.F.R. §§ 148.1-30 (2014), relating to, or arising from, this proceeding;
  7. Any and all claims that it 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. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- E. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. makes findings by the Commission that Respondent violated Regulation 23.602, 17 C.F.R. § 23.602 (2014);
  2. orders Respondent to cease and desist from violating Regulation 23.602, 17 C.F.R. § 23.602 (2014);
  3. orders Respondent to pay a civil monetary penalty in the amount of two hundred thousand dollars (\$200,000), plus post-judgment interest, within

ten (10) days of the date of entry of this Order; and

4. orders Respondent, and its successors and assigns, to comply with the conditions 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. Respondent shall cease and desist from violating Regulation 23.602, 17 C.F.R. § 23.602 (2014);
- B. Respondent shall pay a civil monetary penalty in the amount of two hundred thousand dollars (\$200,000) (“CMP Obligation”), plus post-judgment interest, within ten (10) business days of the date of the entry of this Order. If the CMP Obligation is not paid in full within ten (10) business 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).

Respondent 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 by other than electronic funds transfer, 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  
DOT/FAA/MMAC/AMZ-341  
CFTC/CPSC/SEC  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
(405) 954-7262 office  
(405) 954-1620 facsimile  
nikki.gibson@faa.gov

If payment by electronic funds transfer is chosen, Respondent shall contact Nikki Gibson or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. 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.

- C. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents, or employees under its 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 Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
- D. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent's CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, and shall not be deemed a waiver of the Commission's right to seek to compel payment of any remaining balance.
- E. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

**The provisions of this Order shall be effective on this date.**

**By the Commission**



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

Dated: August 19, 2015