

**UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION**

**In the Matter of
Steven M. Camp
and
Man Financial Inc.**

: CFTC Docket No.
**:
: ORDER INSTITUTING PROCEEDINGS
: PURSUANT TO SECTIONS 6(c) AND 6(d)
: OF THE COMMODITY EXCHANGE ACT
: AND MAKING FINDINGS AND
: IMPOSING REMEDIAL SANCTIONS**

Respondents. :
:

I.

The Commodity Futures Trading Commission (the "Commission") has reason to believe that Steven M. Camp ("Camp") has violated Sections 4b(a)(2)(i) and (iii) and 4c(b) of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 6b(a)(2)(i) and (iii) and 6c(b) (2002) and Commission Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) (2006), and that Man Financial Inc. ("Man"), a registered futures commission merchant ("FCM"), has violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2006). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether Camp and Man engaged in the violations set forth herein, and to determine whether an order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Camp and Man have submitted Offers of Settlement ("Offers"), which the Commission has determined to accept. Without admitting or denying the findings of fact and conclusions of law in this Order, Camp and Man acknowledge service of the Order, consent to the use of the findings in the Order in this proceeding and any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Camp and Man do not consent to the use of their respective Offers or this Order, or the findings to which they have consented in their Offers, as the sole basis for any other proceeding brought by the Commission other than a proceeding to enforce the terms of this Order. Camp and Man do not consent to the use of their respective Offers or this Order, or the findings to which they have consented in their Offers, by any other party in this or any other proceeding. The findings made in this Order are not binding on any other person or entity named as a defendant or respondent in any other proceeding.

III.

A. Summary

From approximately September 2002 through June 2005 (the "relevant period"), Camp, a Man associated person ("AP"), fraudulently solicited at least eleven customers to trade commodity futures and options on futures ("options") at Man. Man's supervisory system failed to detect that Camp was soliciting customers to open accounts by misrepresenting the performance record of two third party trading systems. By fraudulently soliciting customers, Camp violated Sections 4b(a)(2)(i) and (iii) and 4c(b) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) and 6c(b) (2002), and Commission Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) (2006). As a registered FCM, Man is required to supervise diligently the handling by its employees of all commodity interest accounts carried by it. In failing to do so, Man violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2006).

B. Respondents

Steven M. Camp resides in Chicago, Illinois. He was registered as an AP of various entities from February 1998 through October 2006. During the relevant period, he was registered as an AP of Man, d/b/a Fox Investments.

Man Financial Inc. is a Delaware corporation that maintains its principal business address at 717 Fifth Avenue, 9th Floor, New York, NY 10022-8101. Man has been registered with the Commission as an FCM since March 13, 1996, a commodity pool operator ("CPO") since April 2, 1996, and as an Exempt Foreign Firm Agent since April 19, 1996, and has been registered with the Securities and Exchange Commission as a Notice Broker Dealer since January 1, 2003.

C. Facts

1. **Camp Fraudulently Solicited Customers to Open Accounts at Man**

From September 2002 through March 2003, Camp solicited subscribers to the Natural Trigger Point System ("NTPS"), a web-based members-only trading system that provided on-line signals for the purchase and sale of commodity futures and options, to open accounts at Man. After NTPS subscribers opened Man accounts, Camp executed trades for them using NTPS signals. During the time Camp traded the NTPS for his customers, the trading was not profitable.

While Camp knew that the trading for his customers using NTPS signals was not profitable, Camp solicited at least five NTPS customers by misrepresenting to them that the system was successful and that his customers who traded the system had made profits. Based upon Camp's verbal representations that NTPS generated profits for his customers, these five customers funded accounts to be traded pursuant to NTPS signals and collectively lost a total of approximately \$73,000 trading the system.

During the relevant period, neither Camp's immediate supervisor nor any other supervisory employee at Man appropriately monitored his sales solicitations of customer accounts to be traded pursuant to letters of direction in favor of third party system developers ("TPPs").² As a result of this supervisory deficiency, Camp was able to fraudulently solicit the foregoing customers.

Moreover, Camp, using an e-mail solicitation, directed prospective customers to view the NTPS website, intending that they view the trade history portion that depicted profits purportedly earned by trading the system. At the same time, Camp failed to inform the prospective customers that his actual trading using NTPS trading signals was not profitable and never achieved the gains posted on the NTPS website. At the time, Man's supervisory system failed to detect the violations alleged.

In late December 2002, Camp received an e-mail complaint from one of his customers, questioning the discrepancy between the NTPS track record depicted on the NTPS website and the performance record for his account at Man, which was traded by Camp using NTPS trade signals. Man allowed Camp to settle the customer complaint without investigating why there was a discrepancy between the NTPS track record depicted on the NTPS website and Camp's performance record for his managed accounts. Moreover, Man allowed Camp to continue to trade using the NTPS system after they were on notice that the system did not generate the profits listed on the website.

2. Camp Fraudulently Solicited Customers for a Commodity Trading Advisor

During the period August 2004 through June 2005, Camp also fraudulently solicited customers to open accounts at Man to be traded by a Commodity Trading Advisor ("CTA"), who purportedly created a program for trading commodity futures and options. Specifically, Camp defrauded at least six customers during that period by misrepresenting the profitability of the CTA's purported trading program and failing to disclose that customers for whom he placed trades using the CTA's recommendations sustained overall losses. Those six customers collectively sustained losses totaling approximately \$165,000. In August 2004, Camp told one prospective customer that it was likely that he would achieve profits of 30% to 70% the first year he traded using the CTA's recommendations despite the fact that Camp knew (and failed to disclose) that one of the three customer accounts directed by the CTA sustained losses totaling approximately \$65,000 through the end of July 2004.

When Camp solicited a second prospective customer in August 2004, he sent that person charts for a Camp customer trading account directed by the CTA that was funded in September 2003 with \$100,000 and that by June 2004 was valued at \$160,245. Camp, however, did not tell that customer that the account traded by the CTA incurred significant losses in July 2004, and that its account value at the end of July, while still overall profitable, was valued at \$116,924.

Similarly, when Camp solicited a third prospective customer in November 2004, he intentionally misled him by telling him that in the CTA's worst years, he still achieved 40% to

² Third party system developers, because they provide advice for compensation, come within the statutory definition of a commodity trading advisor ("CTA").

50% returns. Camp failed to tell that customer that at least six Camp customer accounts that the CTA directed sustained total losses of approximately \$116,500 through October 2004. By the time Camp solicited a fourth prospective customer in January 2005, the total trading losses through December 2004 for the Camp customer accounts the CTA directed had escalated to approximately \$198,000. Nevertheless, to induce that customer to open an account at Man, Camp falsely represented that the CTA had many clients who made large profits trading with the CTA's recommendations and failed to mention any losses for accounts directed by the CTA.

At the time, due to deficiencies in Man's supervisory system, Man detected none of the foregoing instances of fraudulent solicitation by Camp. Man failed to detect that Camp was making material misrepresentations about the profitability of the CTA's trading system and failing to disclose to prospective customers losses sustained by the CTA's accounts.

Additionally, Camp and the CTA presented a financial planning seminar in February 2005 in Colorado to solicit customers. While Man paid for a portion of the seminar costs and Camp distributed Man account opening documents, Man failed to review the substance of Camp's seminar presentation. Thus, Man failed to detect that Camp's seminar presentation misrepresented the CTA as a successful trader with an overall profitable trading record and failed to detail losses sustained by Camp customer accounts traded by the CTA.

Before allowing Camp to co-sponsor the seminar, Man also failed to determine that the CTA had a significant disciplinary history with the Commission. In particular, Man failed to determine that in March 1999, the Commission entered an Order against the CTA that found that he fraudulently promoted his services as a CTA and enjoined him from trading commodity futures and options for a period of five years and ordered him never to act in any capacity requiring registration with the Commission. Based on Camp's and the CTA's representations at the seminar, a fifth customer opened a Man account.

After the seminar, Camp continued to solicit customers. In March 2005, Camp told a sixth prospective customer that the CTA was a skilled trader who traded for a number of large accounts with balances in excess of \$100,000 and was making good returns for his customers. Camp emphasized the CTA's trading success but failed to tell that customer that through February 2005, seven of the Camp customer accounts that the CTA directed sustained overall trading losses totaling approximately \$188,000.

In approximately March 2005, Camp learned that the CTA had been disciplined by the Commission. After Camp informed Man that the CTA was disciplined by the Commission, Man conducted a further inquiry, which resulted in Man's being apprised of the Commission's allegations against the CTA and the sanctions entered against him. Thereafter, Man told Camp that he would have to end his relationship with the CTA or leave the firm. Camp chose to continue his relationship with the CTA and ended his employment with Man in June 2005.

D. Legal Discussion

Sections 4b(a)(2)(i) and (iii) of the Act prohibit cheating and defrauding or attempting to cheat or defraud or willfully deceiving or attempting to deceive other persons in connection with

commodity futures trading for or on behalf of such persons. Similarly, Section 4c(b) of the Act and Commission Regulation 33.10 prohibit cheating and defrauding or attempting to cheat or defraud or willfully deceiving or attempting to deceive other persons in connection with domestic exchange traded commodity option transactions.

To prove that a respondent has violated either Section 4b(a) or Section 4c(b) and Commission Regulation 33.10(a) and (c) by making false statements or misrepresentations, three elements must be established: 1) that the respondent misrepresented or deceptively omitted certain information regarding commodity futures or options trading; 2) that the misrepresentation was "material"; and 3) that the respondent knew the information was false and calculated to cause harm or recklessly disregarded the truth or falsity of the information (in other words, that he acted with "scienter"). *Hammond v. Smith Barney Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,657 CFTC Mar. 1, 1990); *In re JCC*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,080 at 41,568 (CFTC May 12, 1994), *aff'd sub nom., JCC, Inc., et al. v. CFTC*, 63 F.3d 1557 (11th Cir. 1995); *CFTC v. R.J. Fitzgerald & Co., Inc.*, 310 F.3d 1321, 1328 (11th Cir. 2002), *cert. denied*, 125 S. Ct. 808 (December 13, 2004).

The scienter requirement is met when "highly unreasonable omissions or misrepresentations [are made] ... that present a danger of misleading [customers] which is either known to the Defendant[s] or so obvious that Defendant[s] must have been aware of it." *R.J. Fitzgerald*, 310 F.3d at 1328.

A statement is material if "it is substantially likely that a reasonable investor would consider the matter important in making an investment decision." *Sudol v. Shearson Loeb Rhoades, Inc.*, [1984-1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,748 at 31,119 (CFTC Sept. 30, 1985) (citing *TSC Industries, Inc v. Northway, Inc.*, 426 U.S. 438, 449 (1976)); *Hirk v. Agri-Research Counsel Inc.*, 561 F.2d 96, 103-04 (7th Cir. 1977) (defendants violated Section 4b of the Act by making misrepresentations about the profitability of their commodity trading when soliciting customers).

The first and second elements required to establish violations of Sections 4b(a)(2)(i) and (iii) and 4c(b) of the Act and Regulation 33.10 in this matter are met because Camp misrepresented information to prospective customers that a reasonable person would consider important: 1) that the NTPS was successful and that his customers who traded the system earned profits, and 2) that the CTA was a successful trader and that customers whose accounts were directed by the CTA earned overall profits. Camp acted with scienter because he knew that the entire time he traded the NTPS for his customers the accounts were not profitable and that certain customer accounts directed by the CTA sustained overall losses. By failing to tell prospective customers about the CTA's losses, Camp intentionally misrepresented material facts to prospective customers. See *CFTC v. Rosenberg*, 85 F.Supp.2d 424, 447-448 (D.N.J. 2000) (reporting non-existent trading profits constituted material misrepresentations made with scienter).

Commission Regulation 166.3 requires that every Commission registrant (except APs who have no supervisory duties) diligently supervise the handling by its partners, employees and

agents of all activities relating to its business as a registrant. In order to prove a violation of Regulation 166.3, it must be demonstrated that either: 1) the registrant's supervisory system was generally inadequate, or 2) the registrant failed to perform its supervisory duties diligently. *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); *Bunch v. First Commodity Corp. of Boston*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,352 at 39,168-69 (CFTC Aug. 5, 1992).

Under Commission Regulation 166.3, an FCM has a "duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents." *Samson Refining Co. v. Drexel Burnham Lambert, Inc.* [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,596 at 36,566 (CFTC Feb. 16, 1990) (quoting *Lobb v. J.T. McKerr & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,568 at 36,444 (CFTC Dec. 14, 1989)). Thus, "a showing that the registrant lacks an adequate supervisory system [standing alone] can be sufficient" to establish a breach of duty under Regulation 166.3. *In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,744 (CFTC Dec. 10, 1997). The lack of an adequate supervisory system can be established by showing that the registrant failed to develop proper procedures for the detection of wrongdoing. *CFTC v. Trinity Financial Group Inc.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,179 at 45,635 (S.D. Fla. 1997), *aff'd in relevant part, vacated in part and remanded sub nom. Sidoti v. CFTC*, 178 F.3d 1132 (11th Cir. 1999) (defendants failed to establish and maintain meaningful procedures for deterring and detecting fraud by their employees, and knew of specific incidents of misconduct but failed to take reasonable steps to correct the problems in violation of Regulation 166.3).

As described above, due to deficiencies in Man's supervisory system, Man failed to adequately monitor Camp's sales solicitations of customer accounts to be traded pursuant to letters of direction in favor of TPPs. Owing to that deficiency, Man failed to detect that Camp, its AP, was fraudulently soliciting customers. Man's failure to supervise its AP's sales solicitations, particularly with regard to third party trading systems, establishes a breach of its duty of diligent supervision under Regulation 166.3.

IV.

OFFERS OF SETTLEMENT

Camp and Man have submitted Offers of Settlement in which they acknowledge service of this Order and admit the jurisdiction of the Commission with respect to the matters set forth in this Order and waive 1) the service and filing of a complaint and notice of hearing, 2) a hearing and all post-hearing procedures, 3) judicial review by any court, 4) any objection to the staff's participation in the Commission's consideration of the Offer, 5) all claims that they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000) and part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2006), relating to, or arising from this action, and 6) any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.

Camp stipulates that the record basis on which this Order is entered consists of this Order and the findings in this Order consented to in his Offer. Camp consents to the Commission's issuance of this Order, which makes findings as set forth herein and orders that Camp: 1) cease and desist from violating Sections 4b(a)(2)(i) and (iii) and 4c(b) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) and 6c(b) (2002) and Commission Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) (2006); 2) be permanently prohibited from trading on or subject to the rules of any registered entity, as that term is defined by Section 1(a)(29) of the Act, 7 U.S.C. § 1(a)(29) (2002), and that all such registered entities shall refuse Camp trading privileges; 3) pay a civil monetary penalty in the amount of \$120,000; and 4) comply with his undertakings as set forth in the Offer and incorporated in this Order.

Man stipulates that the record basis on which this Order is entered consists of this Order and the findings in this Order consented to in its Offer. Man consents to the Commission's issuance of this Order, which makes findings as set forth herein and orders that Man: 1) cease and desist from violating Commission Regulation 166.3, 17 C.F.R. § 166.3 (2006); 2) pay restitution totaling \$196,900.44 to the Man customers that Camp defrauded; 3) pay a civil monetary penalty in the amount of \$120,000; and (4) comply with its undertakings as set forth in the Offer and incorporated in this Order.

V.

FINDINGS OF VIOLATIONS

Solely on the basis of Camp's and Man's consents, as evidenced by their respective Offers, and prior to any adjudication on the merits, the Commission finds that: 1) Camp violated Sections 4b(a)(2)(i) and (iii) and 4c(b) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) and 6c(b) (2002) and Commission Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) (2006), and 2) Man violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2006).

VI.

ORDER

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

- A. Camp shall cease and desist from violating Sections 4b(a)(2)(i) and (iii) and 4c(b) of the Act, 7 U.S.C. §§ 6b(a)(2)(i) and (iii) and 6c(b) (2002), and Commission Regulation 33.10(a) and (c), 17 C.F.R. § 33.10(a) and (c) (2006);
- B. Man shall cease and desist from violating Commission Regulation 166.3, 17 C.F.R. § 166.3 (2006);
- C. Camp shall be permanently prohibited from trading on or subject to the rules of any registered entity, as that term is defined by Section 1(a)(29) of the Act, and all such registered entities shall refuse Camp trading privileges thereon after the date of entry of this Order;

- D. Man shall pay restitution in the amount of \$196,900.44 within ten (10) business days of the date of entry of this Order to the customers specified in Exhibit A, attached to this Order, and provide copies of the checks to both the Director, Division of Enforcement, and the Office of Cooperative Enforcement, Division of Enforcement, at Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581;
- E. Camp shall pay a civil monetary penalty in the amount of \$120,000 within ten (10) business days of entry of this Order. Camp shall pay this penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order made payable to the Commodity Futures Trading Commission and sent to the address below:
Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. Macarthur Blvd.
Oklahoma City, OK 73169
If payment by electronic transfer is chosen, Marie Bateman at 405-954-6569 may be contacted for instructions. Camp shall accompany payment of the penalty with a cover letter that identifies Camp, and the name and docket number of this proceeding. Camp shall simultaneously submit a copy of the cover letter and the form of payment to: Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581;
- F. Man shall pay a civil monetary penalty in the amount of \$120,000 within ten (10) business days of entry of this Order. Man shall pay this penalty by making electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order made payable to the Commodity Futures Trading Commission and sent to the address below:
Commodity Futures Trading Commission
Division of Enforcement
ATTN: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. Macarthur Blvd.
Oklahoma City, OK 73169
If payment by electronic transfer is chosen, Marie Bateman at 405-954-6569 may be contacted for instructions. Man shall accompany payment of the penalty with a cover letter that identifies Man, and the name and docket number of this proceeding. Man shall simultaneously submit a copy of the cover letter and the form of payment to: Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581;
- G. Camp shall comply with the following undertakings set forth in his Offer:
1. Camp shall not apply for registration or seek exemption from registration with the Commission in any capacity, except as provided for in Section 4.14(a)(9) of the

Regulations, 17 C.F.R. § 4.14(a)(9) (2006), and shall not engage in any activity requiring such registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Regulations, or act as a principal, agent, officer or employee of any person registered with the Commission or required to be registered with the Commission, except as provided for in Section 4.14(a)(9) of the Regulations; and

2. Neither Camp, nor any of his agents or employees under his authority or control, shall take any action or make any public statement denying, directly or indirectly, any finding 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 Camp's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party; and Camp shall take all steps necessary to ensure that his agents or employees, if any, understand and comply with this undertaking; and

H. Man shall comply with the following undertakings set forth in its Offer:

1. Man will strengthen its supervisory system for overseeing its APs' sales solicitations of customer accounts to be traded by Man APs pursuant to letters of direction in favor of TPPs such that the system is adequate to detect potential violations of the Act and Commission Regulations;
2. All written representations concerning TPPs that Man provides to its customers shall contain a disclaimer that Man is not recommending specific TPPs and that Man has not reviewed or verified the performance results of the TPPs;
3. As part of its recordkeeping responsibilities, Man will, by February 1, 2007, upgrade its customer database to allow it to sort and retrieve open and closed accounts by controlling trader and TPPs; and
4. Neither Man, nor any of its agents or employees under its authority or control, shall take any action or make any public statement denying, directly or indirectly, any finding 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 Man's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party; and Man shall take all steps necessary to ensure that its agents or employees, if any, understand and comply with this undertaking.

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

By the Commission:



Eileen Donovan
Acting Secretary to the Commission
Commodity Futures Trading Commission

Dated: February 20, 2007