

III.

The Commission finds the following:

A. SUMMARY

FCStone had inadequate procedures in place to govern the transfer of positions between customer accounts held at the firm, had not adequately trained its personnel on the circumstances of when such transfers may occur, and on one occasion failed to diligently supervise the handling by its employees of certain commodity interest accounts carried at the firm in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2014).

B. RESPONDENT

FCStone, LLC (“FCStone”) is a Futures Commission Merchant (“FCM”) and Commodity Trading Advisor registered with the Commission since March 6, 2000 and August 8, 2012, respectively. FCStone is a subsidiary of FCStone Group Inc., which was acquired in September 2009 by International Assets Holding Corporation. International Assets Holding Corporation changed its name to INTL FCStone Inc. in 2011 and is a publicly-held company traded on the NASDAQ under the symbol “INTL”.

C. FACTS

A clearing member, like Respondent, may transfer trades or positions among customers’ commodity accounts held at the firm so long as the transfer is merely from one account to another account that has the same beneficial ownership. Indeed, from at least 2008 to the present, the Chicago Mercantile Exchange (“CME”) has had a rule to that effect governing the transfer of positions between customers’ commodity accounts held at a firm.²

Respondent’s Compliance Manual in effect during the Relevant Period did not have policies or procedures governing the transfer of positions between customers’ accounts, and FCStone had no set written policy governing a request by a customer to transfer positions between accounts. Instead, FCStone had an unwritten policy such that its employees understood that they were to seek guidance if a transfer was requested between two accounts that were not under common control. That unwritten policy, however, did not provide specific guidance regarding the impact of beneficial ownership on account transfers. In particular, transfers between accounts can only occur when (i) the transfer merely constituted a change from one account to another account and (ii) the underlying beneficial ownership in the two accounts remained the same.

² In substance, during the Relevant Period, CME Rule 853, which is titled “Transfer of Trades,” required that existing trades may be transferred on the books of a clearing member so long as the transfer merely constitutes a change from one account to another account provided the underlying beneficial ownership in the accounts remains the same. In March of 2014, the CME amended Rule 853.A(1)(i) to state that trades may be transferred on the books of a clearing member only when the transfer results in the transfer of trade(s) from one account to another account with “identical” beneficial ownership.

In May 2013 FCStone transferred positions between two accounts that did not have the same underlying beneficial ownership. In particular, FCStone was the clearing FCM for an individual precious metals supplier located in the United Arab Emirates. On May 2, 2013, the individual orally requested that Respondent transfer approximately \$20 Million in gold and silver positions from his personal account to a corporate account in which he was 98.95% owner. Respondent's employees made the transfer believing that, because the individual and corporate accounts had the same large trader number and the individual controlled both accounts, the positions could be transferred between the two accounts. In actuality, however, the tax identification numbers for the two accounts were different, and the accounts did not have the same underlying beneficial ownership because there were two fractional minority owners of the corporate account.

Subsequently, before it was contacted by the Commission concerning the matters addressed in this Order, FCStone revised its written procedures concerning the transfer of positions between customers' accounts³ and, on or about May 15, 2013, on its own and without being prompted by the Commission, updated its Compliance Manual. Among other things, FCStone now included a new subsection titled "Transfers Between Accounts." Specifically, this new subsection provides:

"In general, transfers of positions may be made between two accounts carried by the Firm only if such transfer does not result in any change in the beneficial ownership of the positions. In addition, such transfers may be made only upon receipt of a written request by the beneficial owner stating: (i) the relevant positions to be transferred; (ii) the accounts involved; and if necessary (iii) that the accounts involved are beneficially owned by the same person or entity. Under certain circumstances, additional or alternative documentation may be required to affect the transfer."

Additionally, since updating its Compliance Manual to include the new subsection concerning the procedures for transferring positions between customers' commodity accounts, FCStone has provided adequate training to its supervisors and/or employees on its new procedures.

Further, FCStone cooperated fully with the Commission's investigation into the matters described in this Order.

IV. LEGAL DISCUSSION

Regulation 166.3, 17 C.F.R. § 166.3 (2014), requires:

³ FCStone revised its written procedures in part because, on May 3, 2013, a large margin call was issued in the corporate account to which the positions had been transferred the previous day, and FCStone then realized that the two accounts did not have the same underlying beneficial ownership.

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried, operated, advised or introduced by the registrant and all other activities of its partners, officers, employees and agents (or persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

A violation under Regulation 166.3, 17 C.F.R. § 166.3 (2014), is an independent violation for which no underlying violation is necessary. *See In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,744 (CFTC Dec. 10, 1997).

A violation of Regulation 166.3, 17 C.F.R. § 166.3 (2014), is demonstrated by showing either that: (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 GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 (CFTC Aug. 11, 1992) (providing that, even if an adequate supervisory system is in place, Regulation 166.3 can still be violated if the supervisory system is not diligently administered), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir.); *In re Paragon Futures Assoc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992) ("The focus of any proceeding to determine whether Rule 166.3 has been violated will be on whether [a] review [has] occurred and, if it did, whether it was diligent"); *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) (noting that, under Regulation 166.3, an FCM has a "duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents")(internal quotation omitted). 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. *In re Paragon Futures Assoc.*, ¶ 25,266 at 38,850; *CFTC v. Sidoti*, 178 F.3d 1132, 1137 (11th Cir. 1999) (defendant was liable for failure to supervise because he "knew of specific instances of misconduct, yet failed to take reasonable steps to correct the problems").

Further, while the absence of a written policy or formal training on every issue does not constitute a failure to supervise, Regulation 166.3 requires all registered FCMs to diligently supervise all activities of its officers, employees, and agents relating to its business as an FCM. *See* 17 C.F.R. § 166.3 (2014). Thus, an FCM may violate Regulation 166.3 even if it does not violate any specific supervisory requirement imposed by either statutory provision or regulatory rulemaking and "a showing that the registrant lacks an adequate supervisory system, standing alone, can be sufficient" to demonstrate a violation of Regulation 166.3. *In re Paragon*, ¶ 25,266 at 38,850.

During the Relevant Period, FCStone had inadequate compliance policies and procedures governing the transfer of positions between customer accounts held at FCStone, inadequate training for its personnel on the circumstances of when such transfers may occur, and failed to perform its supervisory duties diligently by permitting its employees to transfer approximately

\$20 Million in gold and silver positions between two accounts that did not have the same underlying beneficial ownership.

V. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, FCStone violated Regulation 166.3, 17 C.F.R. § 166.3 (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. Stipulate(s) that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent(s) has/have consented in the Offer;

E. Consent(s), 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 166.3, 17 C.F.R. § 166.3 (2014);
2. orders Respondent to cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2014);
3. orders Respondent to pay a civil monetary penalty in the amount of One Hundred Forty Thousand Dollars (\$140,000), plus post-judgment interest; and
4. orders Respondent and its successors and assigns to comply with the conditions and undertakings 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 166.3, 17 C.F.R. § 166.3 (2014);
- B. Respondent shall pay a civil monetary penalty in the amount of One Hundred Forty Thousand Dollars (\$140,000) within ten (10) days of the date of entry of this Order (the "CMP Obligation"). 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 other than by electronic funds transfer, then 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 --- AMZ 340
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

If payment is to be made by electronic funds transfer, 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 the paying Respondent and the name and docket number of this proceeding. The paying Respondent shall simultaneously transmit

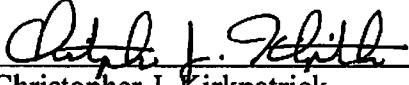
copies of the cover letter and the form of payment to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:

1. **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.
2. **Cooperation with the Commission:** Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, and any other governmental agency in this action, and in any investigation, civil litigation, or administrative matter related to the subject matter of this action or any current or future Commission investigation related thereto.
3. **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, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

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

By the Commission



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

Dated: May 1, 2015