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UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

FCStone LLC,

Respondent.

CFTC Docket No. 13 – 24

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 between January 1, 2008 and March 1, 2009 (the "Relevant Period"), FCStone LLC violated Commission Regulation 166.3, 17 C.F.R. § 166.3 (2008).[1] Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether FCStone LLC has 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, FCStone LLC has submitted the Offer of Settlement of Respondent FCStone LLC ("Offer"), which the Commission has determined to accept. Without admitting or denying any of the findings or conclusions herein, FCStone LLC 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.[2]

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[1] The acts resulting in violations of the Act and Commission Regulations occurred in 2008 and the early part of 2009. Therefore, citations to the Code of Federal Regulations related to violations cite the 2008 version of the Code of Federal Regulations. However, prospective references to the Code of Federal Regulation cite the current version, which is 2012.

[2] FCStone LLC consents to the entry of this Order and 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 FCStone LLC does not consent to the use of the Offer, or the findings or conclusions consented to in this Order, as the sole

III.

The Commission finds the following:

A. Summary

FCStone LLC is a registered futures commission merchant ("FCM"). FCMs solicit and accept orders from customers for the purchase and sale of commodity futures, options and swaps contracts that are traded on registered entities, such as designated contract markets, and cleared through a clearing house. When trading such contracts, an FCM's customer is required to both pay a form of collateral called "margin," which is collected by the clearing house and maintain his account at a positive value. In the event an FCM's customer fails to meet margin obligations relating to his trading activities and the account falls into a net deficit, the FCM is required to satisfy the customer's obligations with the clearinghouse. Because all FCM customers depend on the financial stability of their FCM, both the FCM and the FCM's other customers can be exposed to financial risk arising from any one customer's trading activities.

FCMs are required by Commission regulations to diligently supervise the activities of their officers, employees, and agents relating to their business as an FCM. These supervision obligations include managing risks associated with customer accounts, such as the risks arising from margin obligations that are not satisfied, negative account balances, and the handling of large relatively illiquid positions.

During the Relevant Period, FCStone LLC failed to diligently supervise its officers' and employees' activities relating to risks associated with its customers' accounts, and in particular one account ("the Account") primarily controlled by two of FCStone LLC's customers ("Account Owners"), who traded natural gas futures, swaps, and option contracts. FCStone LLC either did not have or failed to implement adequate credit and concentration risk policies and controls generally and specifically with respect to the Account during a period when the Account accumulated a massive position –more than 2.5 million option contracts – which was illiquid and exposed to changes in market prices. As a result, FCStone LLC's ability to protect and safeguard its own assets was threatened. Such failures violated Commission Regulation 166.3. 17 C.F.R. § 166.3 (2008).

Ultimately, because the Account Owners were unable to meet their financial obligations with respect to the Account, FCStone LLC suffered losses of approximately $127,000,000 of its own funds.

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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 FCStone LLC consent to the use of the Offer or this Order, or the findings or conclusions consented to in the Offer or this Order, by any other party in any other proceeding.

B. Respondent

FCStone LLC (NFA Id # 0300861), is an FCM registered with the Commission since March 5, 2000. FCStone LLC is now a subsidiary of INTL FCStone Inc. ("INTL FCStone"), which is a financial services company incorporated in Delaware and headquartered in New York. Previously, FCStone LLC was a subsidiary of FCStone Group Inc. INTL FCStone came into existence in September 2009, when International Assets Holding Corporation merged with FCStone Group Inc. INTL FCStone is a publicly-held company traded on the NASDAQ.

C. Facts

In or about April 2007, the Account Owners, who were market makers,[3] established the Account, which was a joint trading account, at FCStone LLC. The Account Owners used the Account to purchase and sell futures, options[4] and swaps on the New York Mercantile Exchange ("NYMEX"). Two FCStone LLC officers, who worked within and managed FCStone LLC's Geldermann Division ("FCStone Officers"), approved the opening of the Account.

At the time the Account was opened, FCStone LLC's policies and procedures did not require sufficient credit analysis.[5] Instead, FCStone LLC's procedures provided only the following instructions to its employees and officers with regard to credit risk analysis concerning the firm's customers and accounts:

(i) The minimum deposit should be at least the initial margin requirement or option purchase price. This deposit should be received before the account is traded. In many situations because of the nature of the account FCStone LLC may require a minimum account balance in excess of the exchange margin requirement.

(ii) The prospective customer should supply the names of other brokerage houses used for any commodities, securities or governmental securities trading; if none, so state. In addition, a bank reference with an account should be supplied. For a bank reference to be meaningful, the prospective customer should not supply a new bank account.

(iii) Completion of FCStone LLC's "Customer Account Agreement," which queried:

[3] In the futures industry, this term generally refers to a floor trader or local who, in speculating for his own account, provides a market for commercial users of the market.
[4] An option is a contract that gives the buyer the right, but not the obligation, to buy or sell a specified quantity of a commodity or other instrument at a specific price within a specified period of time, regardless of the market price of that instrument.
[5] These instructions, or procedures, continued to serve as FCStone LLC's sole credit risk procedures until FCStone LLC altered its credit risk policies and procedures in early 2009.

(a) whether the size of the applicant's annual income was "less than $25,000,""$25,000 to $50,000," "$50,000 to $100,000" or "over $100,000." [Both Account Owners noted that their annual income exceeded $100,000];
(b) whether the applicant's net worth was "less than $25,000," "$25,000 to $50,000," or "over $50,000." [Both Account Owners noted that their net worth exceeded $50,000].

Neither of the FCStone Officers contacted the bank references provided by the Account Owners to obtain a credit reference. Instead, the credit risk analysis performed by the FCStone Officers was simply an evaluation of the Account's balance.

In or about January 2008, the Account Owners approached the two FCStone LLC officers who were responsible for evaluating financial risks associated with the Account. The Account Owners told the FCStone Officers they wanted to change their trading strategy by moving some or all of their trading from the NYMEX to the InterContinental Exchange ("ICE"), to take advantage of the differences between the NYMEX and ICE trading fee structures.

The FCStone Officers approved the new strategy without conducting any additional credit risk analysis or imposing any type of credit risk controls, such as position or order limits.[6] Instead, the FCStone Officers simply considered the Account's balance in granting their approval. At the time, the FCStone Officers expected that the overall size of the positions in the Account would not change. At least one of the FCStone Officers understood, prior to granting approval, that the new strategy could become "margin intensive" because it involved maintaining positions on two separate contract markets, both of which required the Account to pay margin.

After the new strategy had been approved, several events took place that should have resulted in the FCStone Officers' re-evaluation of the credit risk posed by the Account. For example, soon after the new strategy had been approved, the FCStone Officers recognized that the Account Owners might require additional funds to finance their trading. As a result, the two FCStone Officers took steps to secure a line of credit from FCStone LLC for the Account's margining needs in the amount of $5,000,000.

Further, on February 7, 2008, the NYMEX issued an unusually large margin call upon the Account that reflected the alteration in both the size and strategy of the Account. NYMEX personnel contacted one of the FCStone Officers, noted that the margin call was "unusually high," and questioned whether FCStone LLC anticipated any potential problems concerning these customers such as either outstanding margin calls or account deficits. In a response made the following day, FCStone LLC personnel represented that the firm had no such concerns. On February 22, 2008, the Account violated position limits in the NYMEX natural gas futures contract by 747 contracts. (The position limit at the time was 1,000 contracts.)

In fact, by the end of February, the Account's position had grown significantly in both size and tenor. For example, prior to the execution of the new strategy, the Account held a

[6] The two FCStone Officers possessed the authority to impose such limits upon customer accounts.

relatively small number of option contracts with expiration dates of 12 or more months in the future. Option contracts with such "distant" expiration dates (tenor) are relatively less liquid, *i.e.,* more difficult to offset than option contracts with shorter expiration dates. For example, at the end of November 2007, the Account held 14,648 open option positions in contracts whose expiration dates were greater than 12 months in the future, representing less than 4% of all open option positions in the Account. Over time, the percentage of such illiquid contracts in the Account grew substantially. By the end of February 2008, the Account held 477,769 open option positions in contracts with a tenor of 12 months or greater, representing 28% of the Account's open option positions.

At this point, one of the FCStone Officers became concerned about the Account Owners' ability to satisfy margin calls. However, he remained unconcerned about the risk associated with the Account. Given his concerns about margin payments, he instructed the Account Owners not to extend their position beyond December 2009 and also to reduce their position. Contrary to his instruction, the Account Owners did not reduce their position and, in fact, entered <u>new</u> positions after the end of February 2008.[7]

On March 27, 2008, a meeting was held between the NYMEX officials, the Account Owners, and one of the FCStone Officers. At this meeting, a NYMEX official informed the Account Owners that the NYMEX was concerned about the size of the Account's position. On April 11, 2008, the NYMEX directed the Account Owners to reduce their position. Despite this instruction, a few weeks later, the Account Owners had, in fact, <u>added</u> to their position.

Despite the events described above which should have triggered some type of credit analysis or the imposition of some type of controls, neither the two FCStone Officers nor anyone else at FCStone LLC ever performed any additional credit analysis relating to, or imposed any position limits upon, the Account.

By the second half of 2008, the FCStone Officers and others at FCStone LLC also learned that (i) the Account held significant positions in thinly traded markets and (ii) the Account Owners were unable to liquidate or significantly reduce the size of the Account without suffering massive losses. Prior to that discovery, and until March 2009, FCStone LLC failed to implement any policies or controls addressing customers' concentration/liquidity risk.[8] During the Relevant Period, FCMs should have been monitoring customer accounts for such risk. Specifically, in 2001, Commission staff stated the following:

> An FCM that carries positions in thinly traded markets, or positions that represent a large portion of a particular product, should take account of the risks posed by

[7] The Account Owners did comply with the request not to add positions with tenors longer than December 2009.

[8] Concentration, or liquidity, risk represents the risk resulting from a position carried in thinly traded markets or where the position holds a significant percentage of the open interest in a particular product. Positions that represent a significant percentage of the open interest in an illiquid product, or a large percentage of open interest in a liquid product, may tend to be difficult to liquidate at or near a previously existing market price. If a trader holds a significant portion of open interest in a product and is forced to unwind positions in a condensed manner, he is exposed to severe losses caused by his own efforts of reduction.

> the resulting illiquidity in its analysis of the losses to which it is exposed, and should manage those risks.

See Report on Lessons Learned From the Failure of Klein & Co. Futures Inc., CFTC Division of Trading and Markets, July 2001, p. 5.

As 2008 progressed, natural gas prices declined.[9] Due to the large size of the Account's position, the large percentage of open interest held by the Account in certain products, as well as unmet margin calls, both NYMEX personnel as well as CME Group Inc. Clearing personnel became increasingly concerned about the Account. During the month of August 2008, the margin requirements for the Account's NYMEX position exceeded that position's net liquidation value on several days.

By the end of October 2008, the Account had suffered losses from which it could not recover.[10] From this point onward, FCStone LLC satisfied all margin calls and trading deficits generated by the Account. Throughout October and November 2008, FCStone LLC Officers monitored the Account and sought to liquidate the account. Despite such efforts, throughout the fall of 2008 and most of the winter of 2008-09, FCStone LLC could neither liquidate nor reduce the Account's positions.

By November 17, 2008, the CME became concerned that the Account might impact FCStone LLC's capital requirements. By December 8, 2008, the CME Clearing House Division determined that FCStone LLC's efforts to manage the Account were inadequate. Consequently, the CME:

- instructed FCStone LLC to provide it with a written plan by December 12, 2008, explaining how it would "liquidate or sell the account;"
- ordered it to make an additional $15,000,000 security deposit; and

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[9] Although natural gas prices declined at this stage and throughout the remainder of 2008, FCStone LLC's lack of adequate credit risk controls was a primary factor in the Account's mounting losses. In fact, FCStone LLC's outside consultant noted in a responsive email related to his potential engagement for further risk assessment that it was the absence of credit controls rather than market risk which caused the firm's losses, stating:

> ...[W]e never looked at credit risk, but that was where the problem with the [ ] account started. If they had sufficient capital, this would have been their problem and not yours. Had we known how to measure capital sufficiency, we might have been able to put a stop to their activities. A fourth concern --- since it was credit risk that caused the problem in the first place, and not market risk, it may make sense to review your OTC accounts in addition to your clearing accounts.

[10] By October 2008, the Account was considered by FCStone LLC to be a "non-performing account." Pursuant to FCStone LLC's policy, a non-performing account is required to be liquidated. That policy was not followed with regard to the Account due to the fact that certain positions held in the Account were so highly concentrated that the liquidation, or significant reduction, of such positions would lead to catastrophic losses for FCStone LLC.

- transfer its 10 largest natural gas traders to other FCMs because of the CME's "continued concerns with the firm's risk management over local option trading."

Despite the CME's demand, FCStone LLC could neither sell nor liquidate the Account without suffering severe losses. FCStone LLC's CEO responded to the CME Clearing House, acknowledging that because the Account Owners held positions in illiquid option contracts they could not reduce the position without suffering "catastrophic losses."

Thus, FCStone LLC maintained control of the Account in December 2008 and January 2009 while actively looking for some third party to take control of the Account and looking for investors for itself to shore up its own financial condition. During this time period, the value of the Account grew increasingly worse.[11]

Ultimately, for most of January and February 2009 (34 days in total), FCStone LLC's adjusted net capital *fell below* the costs charged to it because of the Account.[12] Pursuant to Commission Regulation 1.12(f)(3),), 17 C.F.R. § 1.12(f)(3) (2008), FCStone LLC provided notice to either the Commission or the CME for the 34 days that its adjusted net capital was less than the costs incurred by the Account.

By mid-March 2009, the losses sustained by FCStone LLC as a result of the Account were substantial. Initially, in October 2008, FCStone LLC anticipated that the account would cause it ultimately to incur a bad debt of around $18.5 million. That was an underestimation. By mid-March 2009, FCStone LLC had lost nearly $96,500,000 due to the deficit and margin charges caused by the Account and paid another firm approximately $31,000,000 to assume ownership of most of the Account's position on March 12, 2009. The total losses as of March 2009 were over $127,000,000.

IV.

LEGAL CONCLUSIONS

[11] FCStone LLC's complete failure to develop any type of concentration risk policies or tools had broader implications than just the Account. The CME was FCStone LLC's designated self-regulatory organization ("DSRO"). In December 2008, it performed a risk review of FCStone LLC. In the report following that review, the CME remarked that concentration risk was "one of the largest areas of concern we have with FC Stone." The CME observed that FCStone LLC needed to develop a set of tools to monitor its customers' concentration risk. They also observed that FCStone LLC only identified two accounts, the Account and one other account, as presenting concentration risk problems. In fact, the CME noted, that there were at least <u>eight other accounts</u> which exposed FCStone LLC to concentration risk issues, but FCStone LLC was unaware of such risk.

[12] Whenever a FCM's adjusted net capital falls below an amount by which an account is undermargined, the FCM must provide the Commission with immediate notice. *See* 17 C.F.R § 1.12(f)(3) (2008). Notice must be given because the Commission has found that whenever an FCM's net capital is less than the amount by which an account is undermargined, the FCM is at risk of failing to meet its minimum capital requirements. *See* 52 Fed. Reg. 28,246, at 28,247 (July 29, 1987) (creating the notice obligation required by Regulation 1.12(f)(3) and finding that when an FCM's adjusted net capital falls below the margin charge of any customer account, the potential exists that the firm will default and violate its minimum capital requirements).

Commission Regulation 166.3 requires all registered FCMs to diligently supervise <u>*all*</u> activities of its officers, employees, and agents relating to its business as an FCM. *See* 17 C.F.R. § 166.3 (2008). 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. This concept was conceived at the time the Commission initially adopted Regulation 166.3 and declined to mandate specific supervisory requirements for all FCMs. *See In re GNP Commodities Inc. et al.,* 1992 WL 201158, at *17 (CFTC 1992), *aff'd in part and rev'd in part sub nom., Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993). Ever since the adoption of Regulation 166.3, the Commission has

> continued to eschew [such a] prescriptive approach to supervision, believing that a proper determination of a FCM's supervisory diligence must remain sensitive to the particular facts and circumstances that influenced the design and execution of the system at issue.

Id.[13]

In the past, when supervisory failures threatened the financial viability of an FCM and caused violations of minimum capital requirements, the Commission has found that such conduct violates Regulation 166.3. *See, e.g., In re Alaron*, 2010 WL 3827406 (CFTC Sept. 30, 2010) (In an order simultaneously instituting and imposing sanctions in an administrative proceeding where minimum capital requirements were violated, the Commission stated: "Risk management activity, which exists in principal part to ensure a firm's continued financial viability and, derivatively, to ensure that its capital requirements are met, constitutes other activities relating to a firm's business as a Commission registrant that must be diligently supervised."); *see also In re Szach*, 2001 WL 1729646 (CFTC January 8 2001) (In an order simultaneously instituting and imposing sanctions in an administrative proceeding where the FCM went bankrupt and therefore violated its minimum capital requirements, the Commission found an FCM in violation of Regulation 166.3 where its CFO's failure to supervise resulted in inadequate procedures which, if they had been in place, would have detected a customer's breach of his trading limits, resulting in the bankruptcy).

Moreover, when supervisory failures exposed customers to potential risk of loss the Commission has found that such conduct violates Regulation 166.3. *See, e.g., In re Goldman Sachs Execution and Clearing, LP.*, CFTC 12-20, 2012 WL 1377971, at *6, (Mar. 13, 2012) (In an order simultaneously instituting and imposing sanctions in an administrative proceeding finding an FCM in violation of Regulation 166.3 because it failed to investigate after receiving information suggesting that a Broker-Dealer might be providing its customers with an inaccurate description of the account held at the FCM).

[13] In a similar vein, "proof of an independent substantive violation is not a necessary element to establish a breach of the duty imposed by Rule 166.3. A showing that the registrant lacks an adequate supervisory system, standing alone, can be sufficient." *In re First National Trading Corp.,* 1994 WL 378010, at *10 (CFTC July 20, 1994), *citing In re Paragon* 1992 WL 74261 (CFTC April 1, 1992).

In line with these prior Commission statements regarding the scope of Regulation 166.3, the failure to create an adequate supervisory system with regard to risks that cause or reasonably could cause an FCM material losses may also result in a violation of that Regulation. Managing the risk associated with customer accounts is an elemental activity that relates to any FCM carrying customer accounts. *See, e.g.,* 17 C.F.R. §1.12(f)(3) (2008) (requiring FCMs to provide immediate notice to the Commission whenever one of their customer account's unmet margin and deficit charges exceeds the FCM's adjusted net capital); *see also* Amendments to Minimum Financial and Related Requirements for Futures Commission Merchants and Introducing Brokers, 50 Fed.Reg. 31,612 (Aug. 5, 1985) (in proposing 17 C.F.R. §1.12(f)(3) the Commission observed that an FCM which went bankrupt "may have failed because it was carrying a heavily concentrated position in a particular commodity on behalf of certain customers, and that the firm's financial condition was unable to withstand the sudden, sharp market move which occurred in that commodity.")

All FCMs, through their officers, employees, or agents, must employ adequate internal policies and controls that "safeguard customer and firm assets" in a manner that ensures that such policies and controls do not "contribute substantially to, or if appropriate corrective action is not taken, could reasonably be expected to...(iii) result in a material financial loss." 17 C.F.R §1.16(d)(2) (2008).[14] Accordingly, an FCM violates Regulation 166.3 whenever it fails to possess or implement diligently such policies and controls.

In the instant matter, FCStone LLC failed to diligently supervise its employees' and officers' activities in a manner designed to mitigate customer risks that either substantially contributed to, or could reasonably be expected to threaten, materials losses of firm assets. With regard to credit risk, FCStone LLC both generally and specifically failed to perform meaningful customer credit risk analyses and impose adequate controls. The analyses that were performed simply determined a customer's account balance and monitored whether the margin charges exceeded that amount. Presumably, if a customer approached or exceeded such amounts, FCStone LLC would make a random request for additional deposits or take steps to liquidate the account. However, if the customer had no additional funds and a position could not be liquidated, then FCStone LLC was exposed to severe losses. Consequently, FCStone LLC's credit risk policies and controls during the relevant period were generally inadequate. Second, FCStone LLC specifically failed to diligently assess the credit risk associated with the Account because, after a series of red-flags, no additional credit analyses were performed nor were any controls or limits imposed upon the Account.

With regard to concentration risk, FCStone LLC completely failed to create and implement any meaningful risk control policy or tool that would identify and control customers' concentration risk. As noted above, in 2001, Commission staff advised all FCMs to monitor and control concentration risk. However, FCStone LLC had no policies or controls relating to concentration

[14] Protecting customer assets, as well as firm assets, is a primary goal of the Act and the regulations promulgated thereunder. *See* Denomination of Customer Funds and Location of Depositories, 68 Fed.Reg. 5545 (Feb. 4, 2003) ("One of the most important functions of the Commodity Exchange Act and the rules thereunder is the protection of customer funds.")

risk until 2009. Further, specifically with regard to the Account, FCStone LLC employees were on notice that its position carried significant concentration risk by October 2008, because the Account could not be liquidated due to its concentrated position. Yet, even as late as December 7, 2008, when the CME performed its Risk Review of the firm, FCStone LLC still had no concentration or liquidity risk tools or policies.

These supervisory failures violated Regulation 166.3 because they either contributed substantially to, or could reasonably have been expected to result in material losses of FCStone LLC's assets. For example, as discussed above, FCStone LLC's failures caused or contributed to FCStone LLC's adjusted net capital falling below the Account's charges for 34 days.[15] Further, any time an FCM's customer holds highly concentrated positions and is incapable of satisfying its deficit or margin requirements, a threat exists to the FCM's financial position.[16] Finally, the loss FCStone LLC sustained due to the Account was material given FCStone LLC's financial condition at the time. Accordingly, by failing to require and implement basic credit and concentration risk management policies and controls, FCStone LLC violated Regulation 166.3 throughout the entire Relevant Period.

V. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, FCStone LLC violated Commission Regulation 166.3, 17 C.F.R. §166.3 (2008).

VI. OFFER OF SETTLEMENT

FCStone LLC 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;

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[15] Whenever a single account's unmet charges exceed the carrying FCM's adjusted net capital, the firm's assets are necessarily threatened. *See* 52 Fed. Reg. 28,246, at 28,247 (July 29, 1987) (finding that when an FCM's adjusted net capital falls below the margin and deficit charges of any customer account, the potential exists that the firm will default and violate its minimum capital requirements).

[16] Previously, the Commission recognized that FCMs are in

> peril ...[when] carrying a large amount of positions on one side of the market without any compensating positions on the other side of the market...this risk could be heightened if a substantial portion of the total amount of positions carried by the FCM are held by one trader or by a few traders. If these accounts go into a deficit condition and the account holders are unable or unwilling to cover their losses, the FCM's financial condition may be impaired and the FCM ultimately may experience a financial failure.

50 Fed. Reg. 31,612, at 31,614.

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 (2006) and 28 U.S.C. §2412 (2006), 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 (2012), 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 entity 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 FCStone LLC 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 FCStone LLC violated Commission Regulation 166.3, 17 C.F.R. §166.3 (2008);

2. orders FCStone LLC to cease and desist from violating Commission Regulation 166.3, 17 C.F.R. §166.3 (2012);

3. orders FCStone LLC to pay a civil monetary penalty in the amount of one million, five hundred thousand dollars ($1,500,000), within ten (10) business days of the date of entry of this Order, plus post-judgment interest; and

4. orders FCStone LLC 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:

1. FCStone LLC shall cease and desist from violating Commission Regulation 166.3, 17 C.F.R. §166.3 (2012).

2. FCStone LLC shall pay a civil monetary penalty in the amount of one million, five hundred thousand dollars ($1,500,000), within ten (10) business days of the date of the entry of this Order (the "CMP Obligation"). 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 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 (2006). FCStone LLC 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 – AMZ 340
   E-mail Box: 9-AMC-AMZ-AR-CFTC
   DOT/FAA/MMAC
   6500 S. MacArthur Blvd.
   Oklahoma City, OK 73169
   Telephone: (405) 954-5644

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

Partial Satisfaction. FCStone LLC understands and agrees that any acceptance by the Commission of partial payment of FCStone LLC'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.

3. FCStone LLC and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer (collectively, the "Undertakings"):

A. Reviewer's work: Within ninety (90) calendar days of the entry of this Order, FCStone LLC ("Company") shall enlist the services of an independent third party reviewer ("Reviewer"), subject to approval by the Commission's Division of Enforcement ("Division"), to review and evaluate the Company's existing policies and procedures relating to certain risks. The Reviewer's work is related to risks associated with customer accounts at FCStone LLC throughout 2008 and prior to that time period. The purpose of this review shall be to assess the adequacy of risk controls with respect to the issues identified below in order to ensure that the Company has made sufficient modifications to those controls since 2008.

B. The Reviewer's work shall be performed in several phases.

1. In the First Phase (Phase I), which shall be completed within 120 calendar days after the enlistment of the Reviewer, the Reviewer shall, at a minimum, review and evaluate the effectiveness of the Company's existing internal controls and policies that prevent, detect, and/or mitigate customer credit and concentration/liquidity risk, including but not limited to the risks from customer positions in thinly traded markets. Such review shall include, but not be limited to:

a. an assessment of the Company's policies and procedures relating to the evaluation of customer credit risk, both when an account is opened and throughout the life of the account;

b. an assessment of the efficacy of the Company's "risk limits," including position limits, tenor limits, concentration limits, open interest limits, and/or margin limits to all customer accounts,

c. an assessment of the Company's application of "risk limits," including position limits, tenor limits, concentration limits, open interest limits, and/or margin limits, to all customer accounts, traded electronically or otherwise;

d. an assessment of the Company's policies and practices regarding the stress testing of all positions in customer accounts that could pose material risk to the Company that includes, but is not limited to:

    i. The criteria used by the Company in its identification of customer accounts to be stress tested and the effectiveness of such criteria;

    ii. The means by which such identifying criteria is consistently applied to all customer accounts;

    iii. The identification of the personnel who are responsible for identifying customer accounts to be stress tested and their level of experience and knowledge;

    iv. The efficacy of the stress tests performed, including their ability to effectively stress test option positions;

    v. The identification of the personnel who are responsible for stress testing customer accounts and their level of experience and knowledge;

e. an assessment of the Company's ability to review compliance with intra-day and overnight risk limits;

f. an assessment of the Company's enforcement of all risk limits applied to customer accounts; and

g. an assessment of the Company's policies and controls relating to a customer's request to be exempt from all or certain risk limits, including, but not limited to:

    i. The personnel authorized to consider and grant a customer's exemption request, and whether there are real or potential conflicts of interest;

    ii. The factors considered in evaluating a customer's exemption request and the efficacy of such factors;

    iii. The risk limits imposed after an exemption request has been approved;

iv. The enforcement of the newly authorized risk limits imposed after an exemption request has been approved;

v. The continuing review of a customer's exemption and the efficacy of such reviews;

vi. The criteria used to re-evaluate or revoke a customer's exemption from risk limits;

vii. The memorialization of the:

aa. customer's request;

bb. factors considered by Company staff in reviewing and then granting a customer's request;

cc. personnel involved in the decision making process;

dd. risk limits imposed after a request has been granted;

ee. ongoing reviews of the exemptions granted; and

ff. re-evaluations and revocations of exemptions and the factors considered therein.

2. In the Second Phase (Phase II), which shall be completed within sixty (60) calendar days after the conclusion of Phase I, the Reviewer shall draft and finalize a report containing the following elements:

   a. The title of the Company's documents and materials reviewed by the Reviewer in performing his or her Phase I review and an appendix including a copy of each such document or material;

   b. The name and title of the individuals interviewed or observed by the Reviewer in performing his or her Phase I review and a succinct description of the interview subjects or tasks observed for each.

c. A thorough description of the methods the Reviewer used to evaluate the implementation and effectiveness of risk controls and policies implicated in the Phase I review;

d. A thorough description of the industry standards or other information considered and consulted by the Reviewer in performing his or her Phase I review including the sources for such standards or information;

e. The Reviewer's assessment of the effectiveness of the Company's existing internal controls and policies that prevent, detect, and/or mitigate customer credit and concentration/liquidity risk, including, but not limited to:

   i. The specific identification of controls that are, or reasonably could be, ineffective;

   ii. The specific identification of policies that are, or reasonably could be, ineffective;

   iii. The specific identification of practices that make, or reasonably could make, FCStone LLC's risk controls and policies ineffective.

   iv. The Reviewer's bases for such conclusions, if any, including reference to the specific industry standards and sources that support such conclusions.

f. Recommendations, if any, designed to correct any control, policy, or practice that are, or reasonably could be, ineffective. In making any such recommendation, the Reviewer shall set forth why such recommendations are reasonably designed to improve the Company's internal controls, policies, procedures, and risk management processes, the identity of the FCMs employing such recommendations and/or vendors that supply programs that can be purchases/licensed to satisfy the recommendation, and, if known, the estimated cost of implementing such recommendations, if known.

3. In the Third Phase (Phase II), the Company shall, within sixty (60) calendar days after receiving the Reviewer's report, adopt all the recommendations in the report; provided, however, that within thirty (30) calendar days after receipt, the Company shall:

a. Advise the Division, in writing, if the Company's Designated Self Regulatory Organization or any Division of the CFTC (collectively, the "Regulators") performs a risk assessment or audit during Phase I or II of the Reviewer's work, and the Regulators' findings or recommendations differ from those of the Reviewer. In the event of such conflict, the Regulators' findings and recommendations shall control;

b. Advise the Division, in writing, of any recommendations the Company considers unduly burdensome, unachievable, impractical, or unreasonably costly; and

c. Propose, in writing, an alternative policy, procedure, or system designed to achieve the same objective or purpose or provide an explanation as to the reason for disagreement regarding the objective or purpose of the Regulators' or Reviewer's recommendation.

With respect to any recommendation that the Company considers unduly burdensome, unachievable, impractical, or unreasonably costly and the Company provides written notice of such, the Company need not adopt the recommendation within the aforementioned sixty (60) day time period. As to any recommendation on which the Company does not agree, the Company shall propose an alternative within thirty (30) day following which the Division shall reach an agreement within thirty (30) calendar days after the Company serves the written notice and proposed alternative. The Division reserves the right to pass final judgment on all disagreements. With respect to any recommendation that the Company determines cannot reasonably be implemented within sixty (60) calendar days after receiving the report, the Division may extend the time period for implementation upon receiving a prior written request from the Company.

All recommendations that are implemented shall be employed by the Company indefinitely from the time of the implementation, unless: (i) a change in the law would require that the Company utilize and implement alternative methods for the Company's internal controls, policies, procedures, and risk management processes; or (ii) a material change in the business of the Company causes the recommended action or procedure to become unduly burdensome, unachievable, impractical, or unreasonably costly. In the event of a material change in business under (ii) occurs, then the Company shall notify the Commission's Division of Swap Dealer and Intermediary Oversight ("DSIO") during its routine audit of the Company.

C. Replacement. If the Reviewer resigns or is terminated by the Division, or is otherwise unable to fulfill his or her obligations as set out herein, the Company, shall within thirty (30) calendar days nominate a proposed replacement to the Division for approval. If, after an additional thirty (30) day period, the parties are unable to identify a mutually acceptable person, the Division, shall propose two candidates to the Company for selection.

D. Conflicts. The Reviewer shall not engage any individual or entity as to which the Company reasonably believes a conflict exists.

E. Recordkeeping. The Reviewer shall keep records of his or her activities.

F. Confidentiality. The Reviewer shall take appropriate steps to permanently maintain the confidentiality of any information entrusted to him or her while executing his or her duties pursuant to this Order and shall share such information only with the Commission, the Company, and individuals or entities hired by him or her. The Reviewer shall also take appropriate steps to ensure that any consultants, entities, and/or individuals engaged by him or her to assist with the duties pursuant to the Order shall permanently maintain the confidentiality of information obtained while executing his or her duties.

G. The Company's Obligations. The Company shall cooperate fully with the Reviewer and the Reviewer shall have the authority to take such reasonable steps, in its view, as may be necessary to be fully informed about the operations of the Company within the scope of this review. To that end, the Company shall:

1. Direct their directors, officers, employees, agents, and consultants (i) to cooperate with the Reviewer in the execution of his or her duties under the Order (ii) inform them that they may communicate with the Reviewer anonymously, and (iii) that no director, officer, employee, agent or consultant shall be penalized in any way for providing information to the Reviewer.

2. The Company shall also provide the Reviewer:

   a. Access to all files, books, records, personnel, and facilities that fall within the scope of responsibilities of the Reviewer's review, subject to a legitimate claim of attorney-client privilege ("Privileged Materials");

   b. The right to interview any director, officer, employee, agent or Reviewer of the Company and to participate in any meeting concerning any matter within or relating to his or her duties that is not otherwise protected by the attorney-client privilege; and

c. The right to observe the Company business operations that falls within the scope of responsibilities of the Reviewer's review, that is not otherwise protected by the attorney-client privilege.

3. If, in the Reviewer's discretion, a director, officer, employee, agent, or consultant of the Company fails to cooperate with the Reviewer, the Reviewer may notify the Company, and the Division. The Division may evaluate the Company's response to the uncooperative individual in evaluating the Company's cooperation under this Order.

H. No Affiliation. The Reviewer is not, and shall not be treated for any purpose, as an officer, employee, or agent, of the Company, or the Commission. The Reviewer shall not owe any fiduciary duties or other duties or obligations of any kind to the Company or its directors, officers, employees, shareholders, bondholders or creditors. Moreover, the Company shall not employ the Reviewer for a period of three (3) years commencing on the date of the Reviewer's engagement. Further, the Company shall not employ any entity or individual hired by the Reviewer to fulfill its responsibilities during the Reviewer's engagement, either directly or indirectly, for a period of two (2) years, commencing on the date that the entity or individual's engagement terminates, without prior approval from the Commission.

I. No Attorney-Client Relationship. It shall be a condition of the Reviewer's retention that the Reviewer is independent of the Company and the Company's Affiliates and that no attorney-client relationship shall be formed between them. The Company shall not claim any work-product privilege as to documents created by the Reviewer or by any agents of the Reviewer.

J. Effect of Settlement. The Commission's acceptance of the Company's offer of settlement and entry of this Order shall not be construed as its approval of any policy or practice reviewed by the Consultant and/or implemented based on the Consultant's recommendation.

K. Commission Notifications. Any notifications to the Commission or the Division provided for in these Undertakings shall be made to:

Director, Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street, N.W.

Washington D.C. 20581

L. FC Stone LLC Notifications: Any notifications to FC Stone LLC provided for in these Undertakings shall be made to:

R. Rene Friedman, Esq.,
Vice President, Global Head of Legal & Compliance,
INTL FCStone, Inc.
230 S. LaSalle St.|
Suite 10-500
Chicago, IL 60604

M. Public Statements: FCStone LLC 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 FCStone LLC's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. FCStone LLC 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.

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

By the Commission

Melissa D. Jurgens
Secretary of the Commission
Commodity Futures Trading Commission

Dated: May 29, 2013