



UNITED STATES OF AMERICA
 Before the
 COMMODITY FUTURES TRADING COMMISSION

)	
)	CFTC Docket No: 13-35
In the Matter of)	
Foremost Trading LLC,)	ORDER INSTITUTING PROCEEDINGS
)	PURSUANT TO SECTIONS 6(c) AND 6(d)
Respondent.)	OF THE COMMODITY EXCHANGE
)	ACT, MAKING FINDINGS AND
)	IMPOSING REMEDIAL SANCTIONS
)	
)	

I.

The Commodity Futures Trading Commission (“Commission” or “CFTC”) has reason to believe that from approximately July 2009 to March 2011 (the “Relevant Period”) Foremost Trading LLC (“Foremost” or “Respondent”), a registered introducing broker (“IB”), violated Commission Regulation (“Regulation”) 166.3, 17 C.F.R. § 166.3 (2012). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Foremost engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Foremost has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying the findings or conclusions herein, Foremost consents to the entry of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, 7 U.S.C. §§ 9, 15 (2012) and 7 U.S.C. § 13b (2012) Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Foremost consents to the entry of this Order and to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Foremost does not consent to the use of the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than a proceeding in bankruptcy or to enforce the terms of this Order. Foremost does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order consented to in the Offer, by any other party in any other proceeding.

III.

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Foremost failed to diligently supervise its officers', employees' and agents' handling of accounts held by clients that were referred to Foremost from three unregistered entities that sold futures trading systems (the "Systems Provider(s)"). Foremost's officers, employees and agents ignored warning signs that the Systems Providers were procuring their clients through fraudulent means and engaging in fraudulent business practices. Specifically, Foremost's officers, employees, and agents received complaints and information from clients about the apparently fraudulent misrepresentations made by the Systems Providers and the unscrupulous business practices in which the Systems Providers were engaged. Rather than fully investigate all these claims or inform clients or prospective clients about these claims, Foremost continued to open accounts for client referred by the Systems Providers. Additionally, on numerous occasions, Foremost vouched for the Systems Providers' track records in conversations and correspondence with clients.

B. RESPONDENT

Foremost Trading LLC is an Illinois limited liability company with its principal place of business at 28 North Bennett Street, Geneva, Illinois 60134. Foremost has been registered with the Commission as an IB since February 21, 2001 and has been listed as a forex firm with the National Futures Association ("NFA") since September 10, 2010.

C. FACTS

1. Foremost Received Client Referrals from Systems Providers

Foremost is an IB that specializes in servicing clients who have subscribed to newsletters and third party systems providers. Between 2009 and mid-2011, Foremost opened over 1300 managed accounts for clients who were referred to Foremost by the Systems Providers. Foremost's relationship with the Systems Providers spanned several years.

In 2006, Foremost began opening accounts referred by the owners of System Provider A when they sold futures trading systems through a predecessor company. The same individuals formed another company in 2008 that also sold futures trading systems and operated in the same manner.² Finally, in 2009, these individuals formed System Provider A³, which also sold futures systems and referred clients to Foremost. System Provider B began referring clients to Foremost

² The companies that were predecessors to System Provider A shut down operations after receiving bad press about their business conduct, the poor performance of their systems, and their refusal to pay refunds. Without informing their clients, the companies would simply stop operating under their prior name, a new company would be formed by the owners, new aliases would be created by the marketing staff, and the new company would begin marketing different futures trading systems. Foremost knew some of this history.

shortly after its formation in mid-July 2009. System Provider C, which was formed in 2010, was owned and operated by the same individuals as System Provider B.⁴ It began referring clients to Foremost at its inception.

Generally, the relationship between Foremost and the Systems Providers worked as follows: the Systems Providers would sell a client a system and then arrange for the client to open a managed account by referring the client to one of a few particular introducing brokers. Foremost was the introducing broker that received the vast majority of client referrals from the Systems Providers. In connection with their accounts, clients executed letters of direction to Foremost directing it to execute trades in the client's account pursuant to the trading signals generated by the system that was purchased from a System Provider. Thus, after a letter of direction was in effect, trading pursuant to a system occurred automatically in a client's account unless and until the client instructed Foremost to cease trading in the account.

From the outset of its dealings with the Systems Providers, Foremost was on notice that these entities' operations were apparently fraudulent and unethical. With regard to System Provider A, Foremost was contacted with many complaints as early as 2009 from disgruntled clients that had purchased systems from the companies that were predecessors to System Provider A. Specifically, clients complained about 1) the performance of the systems being overstated during the sales solicitation process, 2) that the companies were not communicating with clients and seemingly "disappeared" overnight when refunds were requested, and 3) the

³ On May 11, 2012 the CFTC filed a complaint against System Provider A, an unregistered entity, and others for fraudulently soliciting and promoting to the public at least two different commodity trading systems pursuant to which client managed accounts would be traded. Litigation in this matter is still pending

⁴ On March 15, 2011, the CFTC filed a complaint against Systems Provider B and Systems Provider C, both unregistered entities, for fraudulently soliciting and promoting to the public at least eight different commodity trading systems pursuant to which client managed accounts would be traded. Default judgment was obtained against these companies in April 2012 and a default order was entered against these companies in June 2012 finding that the companies had violated several of the anti-fraud provisions of the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.* See *CFTC v. The Trade Tech Institute, Inc. et al.*, Case No. CV 11-02163 (C.D. Cal. filed March 15, 2011).

In both litigations, the complaints alleged, among other things, that System Providers A, B and C engaged in a variety of illegal practices while selling their systems. For instance, the complaints alleged that the Systems Providers made fraudulent representations to prospective and current clients about their systems' purported past and potential future profitability and track records, failed to adequately warn clients of the risks inherent in trading futures and options, failed to disclose to clients the systems' losing performance records in client managed accounts and made fraudulent performance-based guarantees.

companies were not always honoring the refunds that came with their “performance-based” guarantees. Foremost personnel knew that System Provider A operated in a substantially similar manner, followed a similar business plan, and was managed by the same individuals as the predecessor companies. With respect to all of the Systems Providers, Foremost staff knew that personnel of each of the Systems Providers used aliases when communicating with clients. Further, prior to agreeing to accept client referrals from the Systems Providers, Foremost had little to no information about the people developing systems for the Systems Providers to be able to credibly assess whether they possessed the proper credentials or experience to develop the purportedly highly profitable futures trading systems Foremost staff knew were being touted by the Systems Providers. In fact, after only six months of receiving referrals from System Provider B, Foremost personnel began working with System Provider B’s system developers to assist them to design a system that did not lose money. Despite the apparently fraudulent and unethical business tactics of the Systems Providers, Foremost willingly received referrals from the Systems Providers entities for at least a two-year period.

2. Foremost Failed to Supervise Diligently the Handling of the Accounts Opened By Clients Referred from the Systems Providers

Foremost’s compliance procedures require that “no member or associate shall make any communication with the public that is fraudulent, deceitful, or uses any high pressure approaches . . . [a]ll communication with the public must be completely factual and straightforward.” Foremost did not comply with this policy.

Foremost received many warning signs or “red flags” of the Systems Providers’ apparently fraudulent and unethical activities. Some of the warning signs or “red flags” Foremost received include:

- Repeated and numerous communications from clients detailing to Foremost false statements made by the Systems Providers about their systems’ profit potential including communications from clients that System Provider A was representing that one of its systems was generating 20% monthly profits and that System Provider B was representing on its website that its systems were generating \$5000 monthly gains.
- Repeated and numerous communications from clients telling Foremost that the Systems Providers had consistently poor ratings on consumer watchdog websites such as the Better Business Bureau website and numerous other allegations of fraud regarding the Systems Providers (or predecessor entities) on internet websites.
- Repeated communications from clients detailing to Foremost employees the high pressure sales techniques Systems Providers were using to persuade people to purchase their systems.

- Repeated and numerous communications from clients explaining to Foremost personnel that the Systems Providers were not honoring the performance-based guarantees they touted when selling their systems.
- Numerous complaints from clients that the Systems Providers had charged their credit cards for the purchase price of systems before clients had authorized them to do so.
- Numerous complaints from clients that Systems Providers were not answering their phones or returning phone calls or emails from clients.
- Explicit statements from clients to Foremost personnel that one or more of the Systems Providers had defrauded them.
- Numerous communications from clients indicating that they had filed claims and received judgments against at least two of the Systems Providers in small claims court.
- In April 2010, System Provider B requested a \$350,000 loan from Foremost because it was unable to pay the refunds associated with its performance-based guarantees.
- In October 2010, a Foremost employee was solicited by System Provider B at her home to purchase a system and was provided false information about the profitability of the system that the System Provider was selling (i.e., that it had made profits on average of \$3000 per month since December 2008) and about Foremost having been in business for 36 years.

Due to Foremost's failure to diligently supervise its employees, officers and agents, it did not communicate with its clients in a factual or straightforward manner about the apparently fraudulent and unethical activities of the Systems Providers. Specifically, with knowledge of the warning signs and red flags detailed above, Foremost did not inform clients of the numerous complaints and allegations they were receiving or had previously received from clients about the Systems Providers' apparently fraudulent and unethical practices. Clients frequently asked Foremost personnel about the profitability of the systems sold by the Systems Providers and Foremost personnel generally responded that they were unable to provide any information about the profitability of the systems but that the Systems Providers' track records did not include slippage and commissions. Foremost also told clients that Foremost had purchased the systems and were trading them in their own accounts. These sorts of statements gave credibility to the Systems Providers false claims about the profitability and future profitability of their systems and led clients to believe that the systems were, in fact, profitable when they were not. When clients complained about the unfavorable information they found on the internet about the Systems Providers and inquired of Foremost whether the information was true, Foremost personnel were encouraged to remind clients that they had met the Systems Providers in person and were also trading their systems. In response to other complaints or inquiries about the credibility of the Systems Providers or their business practices, Foremost provided vague replies

that the programs had been “doing fine” or that Foremost thought that the personnel comprising the Systems Providers seemed like a “good team.” Additionally, when asked by clients about whether System Provider A was connected to its predecessor companies, Foremost personnel stated the companies were not related despite knowing the affiliations between the companies.

IV. LEGAL DISCUSSION

A. **Foremost Failed to Supervise Diligently Its Officers, Employees, and Agents Responsible for Client Accounts Referred to Foremost by the Systems Providers**

Regulation 166.3, 17 C.F.R. § 166.3 (2012), requires –

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 other 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 other persons occupying a similar status or performing a similar function) relating to its business as a registrant.

A violation under Regulation 166.3 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), *In re FCStone LLC*, CFTC Docket No. 13-24, May 29, 2013 at 8.

A violation of Regulation 166.3 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. 1993); *In re Paragon Futures Ass’n*, [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*, ¶ 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”).

During the Relevant Period, Foremost failed to diligently perform its supervisory duties in violation of Regulation 166.3. Foremost received numerous red flags that did or should have alerted it to the Systems Providers' apparently fraudulent and unethical practices. For example, Foremost knew that the Systems Providers used aliases and pseudonyms when soliciting clients and that at least System Provider A was owned by individuals that had operated two similar companies that had gone out of business due to the poor performance of their systems and the inability to repay refunds. Also, Foremost received numerous communications from clients that the Systems Providers had made false statements about the profit potential of their systems, were not honoring their performance-based guarantees and had charged clients' credit cards before being authorized to do so. Finally, Foremost knew that System Provider B was having financial problems and was unable to pay refunds to clients without obtaining a loan. Foremost personnel, however, never attempted to communicate with clients any of the aforementioned information. Instead, in response to inquiries from clients, they provided vague assurances that Foremost was trading the systems without any problems, that Foremost had met the Systems Providers, and that it had been "all good" working with the Systems Providers. Accordingly, Foremost violated its own policy requiring communications with the public to be "completely factual and straightforward."

V. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that during the Relevant Period Foremost violated Regulation 166.3, 17 C.F.R. § 166.3 (2012).

VI. OFFER OF SETTLEMENT

Foremost has submitted an 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 the 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. Waive(s):
 - 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 entry in this proceeding of any order imposing a civil monetary penalty or any other relief;
- D. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Foremost has consented in the Offer; and
- 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 Foremost violated Regulation 166.3, 17 C.F.R. § 166.3 (2012);
 2. Orders Foremost to cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2012);
 3. Orders Foremost to pay a civil monetary penalty in the amount of four hundred thousand dollars (\$400,000) plus post-judgment interest;
 4. Orders Foremost and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and set forth below in Section VII of this Order.

Upon consideration, the Commission has determined to accept the Offer.

VII. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Foremost shall cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2012);
- B. Foremost shall pay to the Commission a civil monetary penalty in the amount of four hundred thousand dollars (\$400,000) within ten (10) days of the date of entry of this Order (“CMP Obligation”). Post-judgment interest shall accrue on its 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 the Order pursuant to 28 U.S.C. § 1961 (2006). Foremost shall pay the CMP Obligation by making 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
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone: (405) 954-5644

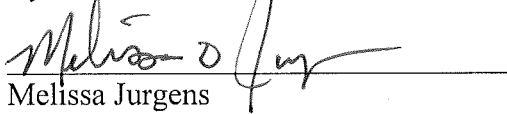
If payment is to be made by electronic funds transfer, Foremost shall contact Linda Zurhorst or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Foremost shall accompany payment of the CMP Obligation with a cover letter that identifies Foremost and the name and docket number of this proceeding. Foremost shall simultaneously transmit copies of the cover letter and the form of payment to: (1) Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; and

- C. Foremost and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Foremost agrees that neither Foremost 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 Foremost’s (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Foremost and its

successors and assigns shall undertake all steps necessary to ensure that all of its agents and employees under its authority and/or control understand and comply with this agreement.

2. 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.
3. Change of Address/Phone: Until such time as Foremost satisfies in full its CMP Obligation as set forth in this Order, Foremost shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten (10) calendar days of the change.

By the Commission

A handwritten signature in black ink, appearing to read "Melissa Jurgens", is written over a horizontal line.

Melissa Jurgens
Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 20, 2013