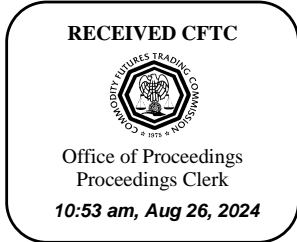


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



_____)
In the Matter of:)

Mark Hendershott,)

Respondent.)

) **CFTC Docket No. 24-17**
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)
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTION 6(c) AND (d) OF THE COMMODITY EXCHANGE ACT, MAKING
FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I. INTRODUCTION

The Commodity Futures Trading Commission (“Commission”) has reason to believe that from in or about May 2018 through at least June 2021 (“Relevant Period”), Mark Hendershott (“Hendershott”) violated Section 4m(1) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 6m(1). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondent engaged in the violations set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Respondent admits the facts set forth in Section II below, acknowledges that his conduct violated the Act, consents to the entry of this Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions (“Order”), and acknowledges service of this Order.¹

¹ Respondent agrees that the findings of fact and conclusions of law in this Order shall be taken as true and correct and be given preclusive effect without further proof in this proceeding and any other proceeding brought by the Commission or to which the Commission is a party or claimant, including but not limited to, a proceeding in bankruptcy or receivership. Respondent does not consent to the use of the Offer or this Order, or the findings or conclusions in this Order, by any other party in any other proceeding.

II. FINDINGS

The Commission finds the following:

SUMMARY

During the Relevant Period, Hendershott violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), by making use of the mails or means or instrumentality of interstate commerce in connection with his business as a Commodity Trading Advisor (“CTA”) without being registered with the Commission as required. Hendershott was required to register as a CTA because during the Relevant Period, he held himself out generally to clients and potential clients as a CTA and during the course of the preceding twelve months, he furnished commodity trading advice to more than fifteen persons.

* * * * *

In accepting Hendershott’s Offer, the Commission recognizes the substantial cooperation of Hendershott with the Division of Enforcement’s (the “Division”) investigation of this matter. The Commission’s recognition of Hendershott’s substantial cooperation is further reflected in the form of a reduced civil monetary penalty.

RESPONDENT

Mark Hendershott is located in Wisconsin and has been registered with the CFTC since November 2023 as an Associated Person of a CFTC-registered CTA and Introducing Broker. Hendershott was not registered in any capacity with the CFTC from 2018 to 2023. Prior to 2018, Hendershott was registered as an Associated Person of two Introducing Brokers.

FACTS

During the Relevant Period, Hendershott was self-employed as a consultant to farmers. While the majority of his consulting services generally related to activities associated with physical crop-related activities, he also provided his clients hedging advice relating to their crop production using commodity futures. Hendershott provided tailored advice to clients concerning their hedging requirements and counseled clients as to the advisability of using futures contracts to hedge their crop production, including wheat, soybeans, oats, corn, and lean hogs futures. Hendershott developed his client base, by contacting prospective clients, including individuals in the farming community. Hendershott provided this advice in exchange for a flat fee that he charged to his clients. Hendershott was not registered in any capacity with the CFTC during the Relevant Period.

In order to facilitate Hendershott’s furnishing of advice with respect to the hedging of his clients’ crop production, Hendershott arranged to have his clients open accounts with a CFTC-registered Futures Commission Merchant (“FCM-1”).

Hendershott introduced approximately twenty four of his consulting clients to FCM-1. Hendershott assisted in the account opening process for each of the clients he introduced to

FCM-1. In addition, he traded on behalf of many of his clients, placing orders for futures contracts, such as wheat, soybeans, oats, corn, and lean hogs futures, on behalf of those clients' accounts. He also engaged in other services for clients, including arranging for transfers to be made into trading accounts from clients' bank accounts, instructing payments to be made from trading accounts to the account holders, and dealing with margin and credit issues within the accounts. Hendershott did not have a power of attorney or other agreement authorizing him to cause transactions to be effected with respect to any of the commodity interest accounts on behalf of which he traded.

During the Relevant Period, Hendershott made use of the mails or means or instrumentality of interstate commerce, such as emails, telephone and the Internet, to conduct his business as a CTA. During the Relevant Period, Hendershott held himself out to his clients and potential clients as a CTA, and during the course of the preceding twelve months, he furnished commodity trading advice to more than fifteen persons.

III. LEGAL DISCUSSION

The Act's registration requirements for commodity professionals are a cornerstone of the regulatory framework enacted by Congress to protect the public. "Registration is the kingpin in . . . [the Commission's] statutory machinery, giving the Commission the information about participants in commodity trading which it so vitally requires to carry out its other statutory functions of monitoring and enforcing the Act." *Flaxman v. CFTC*, 697 F.2d 782, 787 (7th Cir. 1983) (quoting *CFTC v. British Am. Commodity Options Corp.*, 560 F.2d 135, 139-40 (2d Cir. 1977)). Failure to register with the Commission is a serious offense, and not a mere technical violation of the Act. *See British Am. Commodity Options Corp.*, 560 F.2d at 139-40.

Section 1a(12)(A)(i) of the Act, 7 U.S.C. § 1a(12)(i), defines a CTA as a person who for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media as to the value of or advisability of trading in, *inter alia*, commodity futures, commodity options, swaps, and retail forex transactions. Section 1a(12)(A)(ii) of the Act further defines a CTA as any person who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i).

Section 4m(1) of the Act, 7 U.S.C. § 6m(1), requires CTAs, who use the mails or any means or instrumentality of interstate commerce in their business as a CTA, to register with the Commission unless the CTA, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and does not hold himself out generally to the public as a CTA. The Commission has applied the CTA registration requirements to advisors that provide risk management and trading advice. *See, e.g., In re Summit Energy Services Inc.*, CFTC No. 15-12, 2015 WL 1508453, at *1-2 (Jan. 16, 2015) (consent order) (finding respondent that offered advice on OTC swaps and commodity futures to commercial energy producers and consumers failed to register as a CTA as required); *In re Angus Partners, LLC*, CFTC No. 16-36, 2016 WL 5682202, at *1-4 (Sept. 29, 2016) (consent order) (finding respondent that offered trading advice on OTC swaps and commodity options to oil/natural gas retailers failed to register as a CTA as required). Moreover, registration is a strict liability offense. *CFTC v. Wilson*, 812 F.3d 98, 106 (1st Cir. 2016).

Hendershott acted as a CTA because, for compensation or profit, he engaged in the business of advising others as to the value of or advisability in trading commodity futures. *See* Section 1a(12)(A)(i), (ii) of the Act. Hendershott was required to register as a CTA under Section 4m(1) of the Act because he made use of the mails or means or instrumentality of interstate commerce, such as emails, the telephone, and the Internet, in connection with his business as a CTA. Moreover, at all times during the Relevant Period, Hendershott held himself out to clients and potential clients generally as a CTA,² and during the course of the preceding twelve months, Hendershott furnished commodity trading advice to more than fifteen persons. Thus, Hendershott violated Section 4m(1) of the Act by failing to register as a CTA when required to do so.

IV. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Hendershott violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1), by failing to register as CTA when required to do so.

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which he knowingly and voluntarily:

- A. Consents to the resolution of this matter in an administrative proceeding;
- B. Acknowledges service of this Order;
- C. 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;
- D. Admits the facts described in Section II above and acknowledges that this conduct violated Section 4m(1) of the Act;
- E. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;

² Unless a CTA restricts his clients to family, friends, and existing business associates, he is viewed as holding himself out to the public as a CTA. *See In re Samuel Newman*, CFTC No. 04-24, 2004 WL 2005430, at *1-2 (Sept. 9, 2004) (consent order) (finding that respondent held himself out to the public generally where respondent acquired one client by a website and the other clients through friends or by word of mouth); CFTC Interpretation Letter No. 97-26, 1997 WL 188857 (March 26, 1997) (stating that the then-Division of Trading and Markets views “holding oneself out as a CTA” to “include such conduct as promoting advisory services through mailings, directory listings, and stationery, or otherwise initiating contact with prospective clients”).

4. Any and all rights or defenses that he has or might have for the matter to be adjudicated in a federal district court in the first instance, including any associated right to a jury trial;
 5. Judicial review by any court;
 6. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 7. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504, and 28 U.S.C. § 2412, and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2023), relating to, or arising from, this proceeding;
 8. Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201-53, 110 Stat. 847, 857-74 (codified as amended in 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this proceeding; and
 9. 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, including this Order;
- F. Agrees, for purposes of the waiver of any and all rights under the Equal Access to Justice Act specified in Paragraph E.7 above, the Commission is the prevailing party in this action;
- G. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondent has consented in the Offer;
- H. Consents, solely on the basis of the Offer, to the Commission's entry of this Order that:
1. Makes findings by the Commission that Respondent violated Section 4m(1) of the Act, 7 U.S.C. § 6m(1);
 2. Orders Respondent to cease and desist from violating Section 4m(1) of the Act;
 3. Orders Respondent to pay a civil monetary penalty in the amount of seventy-five thousand dollars (\$75,000), within thirty (30) days of the date of entry of this Order; and
 4. Orders Respondent and his successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part VI of this Order.

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

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Section 4m(1) of the Act, 7 U.S.C. § 6m(1).
- B. Respondent shall pay a civil monetary penalty in the amount of seventy-five thousand dollars (\$75,000) (“CMP Obligation”), within thirty (30) days of the date of this Order. If the CMP Obligation is not paid in full within thirty (30) days of the date of entry of this Order, then post-judgment interest shall accrue on the unpaid portion of 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.

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:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
6500 S. MacArthur Blvd.
HQ Room 266
Oklahoma City, OK 73169
9-AMZ-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact the Federal Aviation Administration at the above email 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 his successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
 - 1. Public Statements: Respondent agrees that neither he nor any of his successors and assigns, agents or employees under his 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 his successors and assigns shall comply with this agreement, and shall

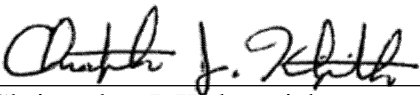
undertake all steps necessary to ensure that all of his agents and/or employees under his authority or control understand and comply with this agreement.

2. Cooperation, in General: Respondent shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement, in this action, and in any current or future Commission investigation or action related thereto. Respondent shall also cooperate in any investigation, civil litigation, or administrative matter related to, or arising from, the subject matter of this action.
3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of any partial payment of Respondent's CMP Obligation shall not be deemed a waiver of his 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.
4. Change of Address/Phone: Until such time as Respondent satisfies in full his CMP Obligation as set forth in this Order, Respondent shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.
5. Until such time as Respondent satisfies in full his CMP Obligation, upon the commencement by or against Respondent of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Respondent's debts, all notices to creditors required to be furnished to the Commission under Title 11 of the United States Code or other applicable law with respect to such insolvency, receivership bankruptcy or other proceedings, shall be sent to the address below:

Secretary of the Commission
Office of the General Counsel
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

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: August 26, 2024