

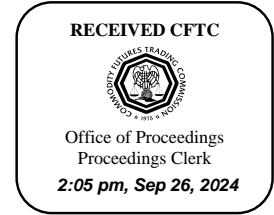
UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

CHS HEDGING, LLC,

Respondent.

CFTC Docket No. 24-32



**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 June 21, 2019 to September 2, 2023 (“Relevant Period”), CHS Hedging, LLC (“CHS” or “Respondent”) violated Section 4g(a) of the Act, 7 U.S.C. § 6g(a), and Regulations 1.31(b)(2), 1.35(a)(1)(iii), and 166.2, 17 C.F.R. §§ 1.31(b)(2), 1.35(a)(1)(iii), 166.2 (2023). 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 findings set forth in Section II.C.1 below, and acknowledges its conduct described in Section II.C.1 violated the Act and Regulations as concluded, and neither admits nor denies the other findings and conclusions herein, and 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, however, to the use of this Order, or any findings or conclusions herein, as the sole basis for any other proceeding brought by the Commission or to which the Commission is a party or claimant, other than: a proceeding in bankruptcy or receivership; or a proceeding to enforce the terms of this Order. Respondent does not

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, CHS failed to make or keep approximately 3,000 audio recordings of its Associated Persons' ("APs") calls with CHS customers. These calls would have included communications concerning quotes, solicitations, bids, offers, instructions, trading, and/or prices leading to transactions in commodity interests. As a registered futures commission merchant ("FCM"), CHS was required to make and keep these recordings for a period of not less than one year. By this conduct, CHS neither made nor kept these records and thus violated Section 4g(a) of the Act, 7 U.S.C. § 6g(a), and Regulations 1.31(b)(2) and 1.35(a)(1)(iii), 17 C.F.R §§ 1.31(b)(2), 1.35(a)(1)(iii) (2023).

Additionally, during the Relevant Period, CHS, through three of its APs, violated Regulation 166.2, 17 C.F.R. § 166.2 (2023), by placing 75 trades for seven customers without a power of attorney and without obtaining specific information from customers about the quantity and/or precise commodity interest to be purchased or sold.

In accepting CHS's Offer, the Commission recognizes CHS's self-reporting and cooperation in connection with the Division of Enforcement's investigation of this matter. The Commission also acknowledges CHS's representations concerning its remediation in connection with this matter.

B. RESPONDENT

CHS Hedging, LLC is a registered FCM headquartered in Inver Grove Heights, Minnesota.

C. FACTS

1. **Recording Deficiencies**

During the Relevant Period, CHS utilized at least three different recording platforms to make or keep audio recordings of communications by its APs with CHS customers: RingCentral, Skype's SmartTap, and Microsoft Teams. At various points during the Relevant Period, CHS failed to record audio recordings of its APs' calls with CHS customers that would have included communications concerning quotes, solicitations, bids, offers, instructions, trading, and/or prices leading to transactions in commodity interests.

In the first instance, from June 21, 2019 through May 17, 2022, 422 customer calls for CHS's RingCentral recording platform were not recorded due to deficiencies in the platform.

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.

Similarly, from October 9, 2019 through June 13, 2023, due to nine separate incidents, 2,115 customer calls for CHS's SmartTap recording platform were not recorded due to deficiencies in the platform. Some of those incidents resulted in a *de minimis* number of calls being lost and were due to isolated events such as a brief software patching issue. Other incidents were more significant and impacted approximately 2,000 calls. For example, from March 2, 2020 to March 30, 2020, a software update impacted as many as 1,336 calls. As another example, from April 22, 2023 to May 3, 2023, following a reboot of CHS's server after a software update, the SmartTap plug-in did not fully restart and impacted 638 calls.

Likewise, from January 3, 2023 through September 2, 2023, approximately 468 additional customer calls were not recorded for a single AP because he forwarded a number of customer calls from his work phone to his personal cell phone, which did not record the calls.

As a result, CHS neither made nor kept these recordings.

After discovering each of its recording deficiencies, CHS represented that it took remedial steps to correct the deficiencies.

2. Unauthorized Trading

During the Relevant Period, three CHS APs (AP 1, AP 2 and AP 3) engaged in unauthorized trading by placing 75 trades for seven customers. The APs placed the trades for customer accounts without first receiving a specific verbal authorization for each trade or obtaining a written authorization permitting the APs to trade on a discretionary basis.

After AP 1 requested to move an executed trade between customer accounts, CHS proactively conducted a review of the AP's trading activity. This review showed that the AP had placed 44 trades for four different customer accounts without first receiving a specific verbal authorization for each trade or obtaining a written authorization permitting the AP to trade on a discretionary basis. Accordingly, CHS terminated the AP's employment.

Thereafter, CHS proactively conducted a more extensive review of its APs' customer authorization process for non-discretionary accounts. Based on that review, CHS found that two other APs had engaged in similar conduct. AP 2 was AP 1's supervisor and likewise had placed 25 trades in two different customer accounts without first receiving a specific verbal authorization for each trade or obtaining a written authorization permitting the AP to trade on a discretionary basis. As such, CHS terminated the supervisor's employment. CHS also found that AP 3 placed six trades for customer accounts without first receiving a specific verbal authorization for each trade or obtaining a written authorization permitting her to trade on a discretionary basis. In this instance, CHS had reason to believe that the AP had placed unauthorized trades on three occasions in a customer account.

After discovering the unauthorized trading by its APs, CHS represented that it conducted remedial training for all APs with respect to taking and placing trades and conducting weekly reviews of telephone discussions between APs and customers.

III. LEGAL DISCUSSION

A. CHS Violated Its Recordkeeping Obligations

As a registered FCM, CHS is required to comply with the recordkeeping obligations set forth in Section 4g(a) of the Act, 7 U.S.C. § 4g(a) and Regulations 1.31 and 1.35, 17 C.F.R. §§ 1.31, 1.35 (2023). Specifically, Section 4g(a) of the Act requires FCMs and other records entities to keep books and records pertaining to transactions and positions in such form and manner and for such period as required by the Commission. Regulation 1.31(b)(2) provides that a records entity required to retain oral communications as part of its recordkeeping obligations shall keep those communications for a period of not less than one year from the date of the communication. Finally, Regulation 1.35(a)(1)(iii) requires FCMs to keep all oral communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest and any related cash or forward transaction. Recordkeeping includes the obligation of ensuring that the data has been correctly archived and the data will be able to be used. The failure to retain and promptly produce required records for inspection to the Commission constitutes a violation of Section 4g of the Act and Regulations 1.31 and 1.35. *See, e.g., In re XP Investments US, LLC*, CFTC No. 22-32, 2022 WL 4597666 (Sept. 23, 2022) (consent order) (finding that an introducing broker violated Section 4g of the Act and Regulations 1.31 and 1.35 by failing to retain 25 days of audio recordings); *In re Woods*, CFTC No. 15-02, 2014 WL 5089105 (Oct. 8, 2014) (consent order) (finding that an introducing broker violated Section 4g of the Act and Regulations 1.31 and 1.35 by failing to preserve certain customer order records).

During the Relevant Period, CHS failed to make or keep approximately 3,000 audio recordings that included communications concerning quotes, solicitations, bids, offers, instructions, trading, and/or prices leading to transactions in commodity interests for the required one-year period set forth in Regulation 1.31(b)(2). Consequently, CHS violated Section 4g(a) of the Act and Regulations 1.31(b)(2) and 1.35(a)(1)(iii).

B. CHS Engaged in Unauthorized Trading

Regulation 166.2, 17 C.F.R. 166.2 (2023) prohibits FCMs and their APs, directly or indirectly, from effecting a transaction on behalf of a customer without first obtaining from the customer or the person designated to control the account: (1) “[t]he precise commodity interest to be purchased or sold; and (2) [t]he exact amount of the commodity interest to be purchased or sold[.]” Thus, “a liability analysis under Commission Rule 166.2 focuses on two issues: (1) whether there was a written power of attorney in effect at the time of the transaction at issue and, if not, (2) whether the transaction was specifically authorized by the customer in advance of its execution.” *Kacem v. Castle Commodities Corp.*, CFTC No. 95-R030, 1997 WL 265002, at *6 (May 20, 1997) (quoting *In re Heitschmidt*, CFTC No. 92-25, 1994 WL 621593, at *5 (Nov. 9, 1994)). A customer’s specific authorization must be in writing, *id.*, and post-transaction conduct is insufficient to constitute authorization, which must be provided in advance of the transaction. *Heitschmidt*, 1994 WL 621593, at *5.

During the Relevant Period, CHS, through three of its APs, violated Regulation 166.2 by placing 75 trades for seven customers without a power of attorney and without obtaining specific

information from customers about the quantity and/or precise commodity interest to be purchased or sold.

IV. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 4g(a) of the Act, 7 U.S.C. § 6g(a), and Regulations 1.31(b)(2), 1.35(a)(1)(iii), and 166.2, 17 C.F.R. §§ 1.31(b)(2), 1.35(a)(1)(iii), 166.2 (2023).

V. OFFER OF SETTLEMENT

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

- A. Consents to the resolution of this matter in an administrative proceeding;
- B. Acknowledges service of this Order;
- C. Admits the facts described in Section II.C.1 herein, and neither admits nor denies the other findings and conclusions herein;
- D. Acknowledges that its conduct, as described in Section II.C.1. herein, violated Section 4g(a) of the Act, 7 U.S.C. § 6g(a), and Regulations 1.31(b)(2) and 1.35(a)(1)(iii), 17 C.F.R. §§ 1.31(b)(2), 1.35(a)(1)(iii) (2023);
- E. 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;
- F. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Any and all rights or defenses that Respondent 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 it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–253, 110 Stat. 847, 857–74 (codified as amended at 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;
- G. Agrees that it is not the prevailing party in this action for purposes of the waiver of any and all rights under the Equal Access to Justice Act specified in subpart 7 of Paragraph F;
- H. Stipulates that the record basis on which this Order is entered shall consist solely of the findings contained in this Order to which Respondents has consented in the Offer; and
- I. 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 4g(a) of the Act and Regulations 1.31(b)(2), 1.35(a)(1)(iii), and 166.2;
 2. Orders Respondent to cease and desist from violating Sections 4g(a) of the Act and Regulations 1.31(b)(2), 1.35(a)(1)(iii), and 166.2;
 3. Orders Respondent to pay a civil monetary penalty in the amount of six hundred and fifty thousand dollars (\$650,000), within ten (10) business days of the date of entry of this Order; and
 4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in the Offer and as set forth in Part 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 4g(a) of the Act, 7 U.S.C. § 6g(a), and Regulations 1.31(b)(2), 1.35(a)(1)(iii), and 166.2, 17 C.F.R. §§ 1.31(b)(2), 1.35(a)(1)(iii), 166.2 (2023).
- B. Respondent shall pay a civil monetary penalty in the amount of six hundred and fifty thousand dollars (\$650,000) (“CMP Obligation”) within ten (10) business days of the date of entry of this Order. 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 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 and any post-judgment interest 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-AMC-AR-CFTC@faa.gov

If payment is to be made by electronic funds transfer, Respondent shall contact 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 its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent and its successors and assigns shall comply with this agreement, and shall undertake all steps necessary to ensure that all of its agents and/or employees under its authority or control understand and comply with this agreement.
 2. Cooperation, 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, 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 its obligation to make further payments pursuant to the

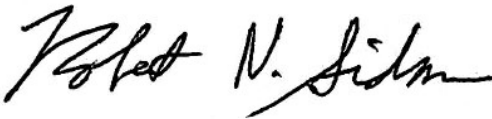
Order, or a waiver of the Commission's right to seek to compel payment of any remaining balance.

4. Change of Address/Phone: Until such time as Respondent satisfies in full its CMP Obligation as set forth in the Order, Respondent shall provide written notice to the Commission by certified mail of any change to its telephone number and mailing address within ten calendar days of the change.
5. Notice to Creditors: Until such time as Respondent satisfies in full its 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 NW
Washington, DC 20581

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

By the Commission.



Robert N. Sidman
Deputy Secretary of the Commission
Commodity Futures Trading Commission

Dated: September 26, 2024