

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

ADM Investor Services Inc.,

Respondent.

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CFTC Docket No. 19-11

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Office of Proceedings
Proceedings Clerk

5:00 pm, Jul 12, 2019

**ORDER INSTITUTING PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(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 ADM Investor Services Inc. (“Respondent”) violated Commission Regulation (“Regulation”) 166.3, 17 C.F.R. § 166.3 (2018). 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. Without admitting or denying any of the findings or conclusions herein, Respondent 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

II. FINDINGS

The Commission finds the following:

¹ Respondent consents to the use of these findings of fact and conclusion of law in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party or claimant, and agrees that they shall be taken as true and correct and be given preclusive effect therein, without further proof. Respondent does not consent, however, to the use of this Order, or the 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 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.

A. SUMMARY

From at least December 1, 2014 to September 24, 2017 (the “Relevant Period”), Respondent, a registered futures commission merchant (“FCM”), failed to diligently supervise the handling by its employees and agents of commodity interest accounts carried by Respondent and introduced by a Respondent guaranteed introducing broker (“GIB”), as well as the activities of its employees and agents relating to its business as a registered FCM to ensure compliance with the Act and Regulations, and to deter and detect wrongdoing, in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2018).

In particular, Respondent had a supervisory system in place as evidenced by its compliance manual; nevertheless, Respondent failed to adequately supervise its employees and agents to ensure they: (1) executed bunched orders that properly segregated the GIB’s proprietary trades from its customer trades; (2) executed bunched orders that properly segregated trades from discretionary and non-discretionary GIB customer accounts; and (3) executed orders for non-discretionary GIB customers only when the GIB had obtained specific customer authorization for the transaction.

In accepting Respondent’s Offer of Settlement, the Commission recognizes Respondent’s cooperation during the Division of Enforcement’s investigation of this matter.

B. RESPONDENT

ADM Investor Services Inc. is a registered FCM located in Chicago, Illinois. The GIB discussed herein was a GIB of Respondent from at least December 2014 to September 2017.

C. FACTS

1. Respondent Executed Bunched Orders That Contained Trades for the GIB’s Proprietary and Customer Accounts and Bunched Orders That Contained Trades for the GIB’s Discretionary and Non-Discretionary Customer Accounts

During the Relevant Period, the GIB regularly submitted to Respondent bunched orders for post execution allocation that included both: (1) proprietary and customer trades; and (2) discretionary and non-discretionary customer trades. On December 4, 2014, just days after Respondent guaranteed the GIB, Respondent learned that the GIB had combined proprietary and customer trades (both discretionary and non-discretionary) in a single “bunched” order. That same day, Respondent directed the GIB that it was not permitted to bunch such orders together. Notwithstanding this direction, the GIB continued to submit to Respondent these types of bunched orders for post execution allocation. Indeed, in late December 2014, one of Respondent’s compliance managers alerted another of Respondent’s compliance officers in an email that the GIB placed bunched orders containing trades for proprietary, discretionary, and non-discretionary accounts.

Subsequently, on three occasions in January and March 2016, Respondent again realized that the GIB had submitted to Respondent bunched orders that contained trades for proprietary accounts as well as trades for discretionary and non-discretionary customer accounts.

Further, during the Relevant Period, after submitting these bunched orders to Respondent, the GIB provided Respondent's floor brokers with post-allocation fill instructions informing the floor brokers which of the proprietary, discretionary and non-discretionary accounts would receive the executed transactions. Accordingly, because of these instructions, Respondent knew that the bunched orders submitted by the GIB for execution combined trades for (a) the GIB's proprietary accounts with customer accounts; and (b) discretionary customer accounts with non-discretionary customer accounts but continued to process the unlawful bunched orders.

2. Respondent Executed Bunched Orders for the GIB's Non-Discretionary Customers When Respondent Was Aware or Should Have Been Aware That the GIB Had Not Obtained Specific Customer Authorization for the Option Transaction

During the Relevant Period, Respondent executed bunched orders for the GIB's non-discretionary customers when the GIB had not obtained specific authorization from the customer for the transaction. Specifically, the GIB exercised trading discretion over non-discretionary customer accounts. However, the GIB did not have powers of attorney from those customers and in certain instances had not obtained the requisite specific authorizations from those customers as to, among other things, the precise commodity interest that it was selling or the exact amount of the commodity interest that was being sold.

During the Relevant Period, Respondent was aware or should have been aware that certain trades it executed on behalf of the GIB's non-discretionary customers, including as part of bunched orders, were not specifically authorized by the customers. For example, prior to becoming a GIB of Respondent in December 2014, the GIB was guaranteed by a prior FCM. In July 2014, the prior FCM conducted an audit of the GIB. The prior FCM noted in its audit report that on multiple occasions the GIB did not appear to be properly timestamping the trade tickets for certain bunched orders. In particular, the initial timestamps on certain trade tickets, which evidenced when the GIB purportedly contacted a non-discretionary customer to obtain their specific authorization for the trade, appeared to match the exact same timestamp that the GIB supposedly submitted these trades to the prior FCM for execution. This raised a red flag for the prior FCM that the GIB was not obtaining specific customer authorizations. During the due diligence process of transferring the GIB relationship from the prior FCM to Respondent, the prior FCM provided Respondent with copies of the prior FCM's audit reports for the GIB. Notwithstanding the red flags contained in the audit report, Respondent continued to accept orders from the GIB for which the GIB failed to obtain the requisite customer authorizations.

Similarly, in October 2014, the GIB informed the prior FCM that the GIB did not obtain from its customers specific authorization when it canceled and replaced orders on behalf of those customers. A former employee of the prior FCM who became an employee of Respondent informed Respondent of her suspicions that the GIB may be engaged in unauthorized trading. Notwithstanding this additional red flag, Respondent continued to accept orders from the GIB for which the GIB failed to obtain the requisite customer authorizations.

In addition, at or about the same time, Respondent hired the auditor who had conducted the July 2014 audit of the GIB at the prior FCM. The auditor's responsibilities at Respondent included conducting audits of the GIB.

In January 2015, the prior FCM's auditor, who now worked at Respondent, informed Respondent's management of her suspicions that, among other things, the GIB was engaging in unauthorized trading for non-discretionary customer accounts.

Further, in March 2015, the auditor conducted an audit of the GIB on behalf of Respondent. In that audit, the auditor again noted that on multiple occasions that the GIB did not appear to be properly timestamping the trade tickets for certain bunched orders. In particular, and like the earlier audit done in July 2014, the timestamp that evidenced when the GIB purportedly contacted a non-discretionary customer to obtain their specific authorization for the trade appeared to match the exact same timestamp that the GIB supposedly submitted these trades to the FCM for execution. As before, these concurrent timestamps on these tickets constituted additional red flags of unauthorized trading.

In January 2016, Respondent's compliance department realized that the GIB had submitted to Respondent a bunched order that improperly contained trades for both proprietary accounts as well as trades for discretionary and non-discretionary customer accounts. Respondent later directed the GIB to stop bunching orders in this manner, and subsequently, encouraged the GIB to change its registration status to that of a Commodity Trading Advisor. Respondent's compliance department also was concerned that the GIB had not obtained specific authorizations from non-discretionary customers for the original trades contained in the bunched order or subsequent orders in which the GIB cancelled and replaced the original orders multiple times. Indeed, after conducting an investigation of that bunched order, Respondent's compliance department prepared a comprehensive memorandum concerning the investigation and concluded that the GIB acted improperly in submitting these bunched orders, and that the GIB may have failed to obtain the requisite specific authorizations from non-discretionary customers for the original trades contained in the bunched order. This memorandum was provided to Respondent's management. Notwithstanding this red flag, Respondent continued to accept orders from the GIB for which the GIB failed to obtain the requisite customer authorizations.

3. Respondent's Compliance Manual

Respondent's compliance manual was, in relevant part, consistent with the requirements of certain Regulations pertinent to the issues in this case, specifically, Regulations 1.35(b)(5), 155.3(a)(1), 155.4(a)(1), 166.2, 17 C.F.R. §§ 1.35 (b)(5), 155.3(a)(1), 155.4(a)(1), and 166.2 (2018).

During the Relevant Period, Respondent's compliance manual thus provided that orders for proprietary accounts, that is, accounts in which a firm had an ownership interest, could not be bunched with orders for customer accounts. The compliance manual also provided that orders for discretionary customer accounts, that is, accounts that had provided powers-of-attorney, could not be bunched with orders for non-discretionary customer accounts. Respondent's compliance manual further required that a non-discretionary customer be informed of, and agree to all parameters of a trade (i.e., quantity, commodity, delivery month, option type, and strike price(s)) prior to executing the transaction on the customer's behalf).

III. LEGAL DISCUSSION

Regulation 166.3, 17 C.F.R. § 166.3 (2018), 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.

Under Regulation 166.3, a registrant has a “duty to develop procedures for the ‘detection and deterrence of possible wrongdoing by its agents.’” *Samson Refining Co. v. Drexel Burnham Lambert, Inc.*, CFTC No. 82-R448, 1990 WL 282783, at *11 (Feb. 16, 1990) (quoting *Lobb v. J.T. McKerr & Co.*, CFTC No. 85-R185, 1989 WL 242384, at *11 (Dec. 14, 1989)).

A violation of Regulation 166.3 is established 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 FCStone, LLC*, CFTC No. 15-21, 2015 WL 2066891, at *3 (May 1, 2015) (consent order) (citing *In re Murlas Commodities*, CFTC No. 85-29, 1995 WL 523563 (Sept. 1, 1995)). So, even if proper procedures are in place, a supervisory violation may occur if a registrant fails to implement those procedures, or fails to ensure that its agents follow those procedures. *See, e.g., GNP Commodities*, 1992 WL 201158, at *17 (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 and stating 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”), *aff’d sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993).

Further, a violation of Regulation 166.3 is an independent violation for which no underlying violation is necessary. *FCStone*, 2015 WL 2066891, at *3. Instead, evidence of underlying 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. *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, Respondent was registered with the Commission and had an obligation to diligently supervise its employees and agents in their handling of customer orders. Among other things, where bunched orders are being used and thus orders are being allocated to specific customer accounts post-execution, Regulation 1.35(b)(5) places an affirmative obligation on FCMs to monitor for unusual or suspicious activity and to make reasonable inquiry if an FCM has actual or constructive knowledge of red flags indicating a likelihood of such activity. *See Account Identification for Eligible Bunched Orders*, 68 Fed. Reg. 34,790, 34,792

(June 11, 2003); *see also* NFA Notice 9029. Consistent with these obligations, during the Relevant Period Respondent had a compliance manual that required Respondent employees, among other things, to take appropriate measures to ensure that: trades for proprietary accounts and customer accounts were not contained in the same bunched order; trades for discretionary accounts and non-discretionary accounts were not contained in the same bunched order; and the requisite customer authorization was obtained for trades for non-discretionary accounts.

Thus, Respondent here had an obligation to monitor the post-execution allocation process for unusual or suspicious activity—particularly after Respondent had knowledge of red flags including that the GIB was not obtaining specific customer authorizations for certain of the bunched order transactions. Notwithstanding these obligations, however, with respect to orders placed by its GIB, Respondent employees and agents routinely: (1) executed bunched orders that contained trades for the GIB’s proprietary and GIB’s customer accounts; (2) executed bunched orders that contained trades for the GIB’s discretionary and non-discretionary customer accounts; and (3) executed orders for the GIB’s non-discretionary customers, including bunched orders, when the GIB had failed to obtain specific customer authorization for the option transaction. As noted, this occurred even after Respondent had identified that the GIB’s orders were not compliant with the Act and Regulations. In failing to supervise its employees and agents to ensure they carried out these obligations in their handling of the commodity interest accounts, Respondent violated Regulation 166.3.

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the relevant period, Respondent violated Regulation 166.3, 17 C.F.R. § 166.3 (2018).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it without admitting or denying the findings and conclusions herein:

- A. Acknowledges service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based on violation of or enforcement of this Order;
- C. Waives:
 - 1. The filing and service of a complaint and notice of hearing;
 - 2. A hearing;
 - 3. All post-hearing procedures;
 - 4. Judicial review by any court;

5. Any and all objections to the participation by any member of the Commission's staff in the Commission's consideration of the Offer;
 6. Any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2012), and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2018), 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, tit. II, §§ 201-53, 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
 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, including this Order.
- D. 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;
- 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 Respondent violated Regulation 166.3, 17 C.F.R. § 166.3 (2018);
 2. Orders Respondent to cease and desist from violating Regulation 166.3;
 3. Orders Respondent to pay a civil monetary penalty in the amount of two-hundred fifty thousand dollars (\$250,000), plus post judgment interest;
 4. Orders Respondent 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 Regulation 166.3, 17 C.F.R. § 166.3 (2018);
- B. Respondent shall pay a civil monetary penalty in the amount of two-hundred fifty thousand dollars (\$250,000) (CMP Obligation), plus post judgment interest. Post-judgment interest shall accrue on the CMP Obligation beginning ten calendar days after the date of the entry of the Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961 (2012).

Respondent shall pay the CMP Obligation by electronic funds transfer, U.S. postal money order, certified check, bank cashier's check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

MMAC/ESC/AMK326
Commodity Futures Trading Commission
Division of Enforcement
HQ Room 181
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

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

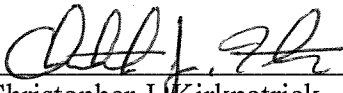
- C. Respondent shall comply with the following conditions and undertakings set forth in the Offer:
1. Public Statements: Respondent agrees that neither it nor any agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in this Order or creating, or tending to create, the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Respondent's: (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Respondent 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 with the Commission: 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 or the Monitor 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 Consent 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.

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: July 12, 2019