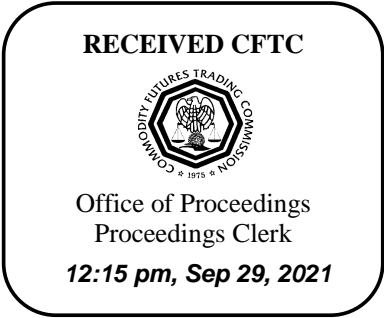


UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION



_____)
In the Matter of:)
)
)
 Symphony Communication)
 Services, LLC,) **CFTC Docket No. 21-35**
)
)
 Respondent.)
_____)

**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 from about July 2019 to March 2021 (“Relevant Period”), Respondent Symphony Communication Services, LLC (“Respondent” or “Symphony”) violated Section 5h(a)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 7b-3(a)(1) (2018), and Commission Regulation (“Regulation”) 37.3(a)(1), 17 C.F.R. § 37.3(a)(1) (2020). 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 Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”) and acknowledges service of this Order.¹

¹ Respondent consents to the use of the findings of fact and conclusions 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.

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Respondent marketed and operated an unregistered swap execution facility (“SEF”) that provided subscribers the ability to execute or trade swaps by accepting bids and offers made by multiple participants on a platform in various interest rate and cross currency swaps.

* * * * *

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

B. RESPONDENT

Symphony Communication Services, LLC is a limited liability company organized under the laws of Delaware in 2014. Symphony is a financial communications company with a U.S. headquarters in Palo Alto, California. Symphony has never been registered with the Commission in any capacity.

C. FACTS

During the Relevant Period, Symphony operated “SPARC Tool” on its communication platform. Symphony designed the SPARC Tool to provide a technological tool for automated request for quote (“RFQ”) workflow for interest rate and cross currency swaps. SPARC Tool enabled swap market participants to select swap product parameters, such as swap type, clearing preference, tenor, and notional size to populate RFQs. Those RFQs could be sent to multiple swap market participants. SPARC Tool then permitted swap market participants that received the RFQs to negotiate prices that could be acknowledged or confirmed using the command “done.”

Symphony marketed its SPARC Tool through direct communication with swap market participants and live demonstrations at trade shows, several of which were archived on and accessible via YouTube. By the end of 2020, Symphony had plans to expand SPARC Tool adoption and adjust its business model to create usage-based pricing by asset class based on the number of RFQs received.

During the Relevant Period, Symphony entered SPARC Tool licensing agreements with numerous entities. SPARC Tool permitted swap market participants to prepare and send RFQ messages to multiple swap market participants. The first live RFQ took place on SPARC Tool in July 2019.

After the Division began an inquiry into Symphony’s unregistered activity, Symphony proactively identified and provided relevant information and thereafter took immediate steps to cease operation of its SPARC functionality. Accordingly, as previously noted, the civil monetary penalty here is reduced to reflect Respondent’s substantial cooperation and remediation.

III. LEGAL DISCUSSION

A. Section 5h(a)(1) of the Act and Regulation 37.3 Require SEF Registration

Section 5h(a)(1) of the Act establishes the SEF registration requirement. The Act prohibits any person from operating a “facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market [“DCM”]” 7 U.S.C. § 7b-3(a)(1) (2018). Regulation 37.3(a)(1) similarly requires any “person operating a facility that offers a trading system or platform in which more than one market participant has the ability to execute or trade swaps with more than one other market participant on the system or platform” to register as a SEF or DCM. 17 C.F.R. § 37.3(a)(1) (2020). Section 1a(47) of the Act defines “swap” to include interest rate swaps and cross currency swaps, which were permitted products in the Symphony SPARC Tool. 7 U.S.C. § 1a(47)(A)(iii) (2018). Whether a particular entity falls within the scope of 5h(a)(1) depends on all of the relevant facts and circumstances of the entity’s operation.²

B. The SEF Registration Requirement Applies to Multiple-to-Multiple Platforms

The SEF definition in Section 1a(50) of the Act, 7 U.S.C. § 1a(50) (2018), defines SEF as:

[A] trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—
(A) Facilitates the execution of swaps between persons; and (B) is not a designated contract market.

Id.

One prong of the foregoing definition is the “multiple-to-multiple prong.” A trading system or platform that permits RFQs where a single requestor initiates for each transaction a one-to-many communication by submitting an RFQ (for firm or indicative quotes) to multiple participants will satisfy the multiple-to-multiple prong if more than one participant is able to submit such an RFQ on the system or platform.³ A facility that is built for the purpose of

² See Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33482 (June 4, 2013) (“2013 Final Rule”).

³ *Id.* at 33482 and n. 94.

accommodating multiple one-to-one communications for a given transaction will also meet the multiple-to-multiple prong.⁴

Symphony's SPARC Tool permitted swap market participants access to a platform with a menu of specified swap terms that populated an RFQ that could be sent to multiple other participants in interstate commerce. Those participants could negotiate prices, and the swap market participants could acknowledge or confirm the RFQs using "done" commands, thus executing the swaps.

C. Symphony Violated Section 5h(a)(1) of the Act and Regulation 37.3

During the Relevant Period, Symphony operated a multiple-to-multiple platform designed to facilitate the trading of swaps. However, Symphony did not register the platform as a SEF or DCM. Accordingly, Symphony violated Section 5h(a)(1) of the Act and Regulation 37.3(a)(1).

IV. FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that, during the Relevant Period, the Respondent violated Section 5h(a)(1) of the Act, 7 U.S.C. § 7b-3(a)(1) (2018), and Regulation 37.3(a)(1), 17 C.F.R. § 37.3(a)(1) (2020).

V. OFFER OF SETTLEMENT

Respondent 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 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 participation by any member of the Commission's staff in the Commission's consideration of the Offer;

⁴ *Id.*

6. Any and all claims that it may possess under the Equal Access to Justice Act; 5 U.S.C. § 504 (2018) and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. § 148.1-30 (2020), 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, §§ 201–253, 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
 8. Any claims of Double Jeopardy based on the institution of this proceeding or 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 Section 5h(a)(1) of the Act, 7 U.S.C. § 7b-3(a)(1) (2018), and Regulation 37.3(a)(1), 17 C.F.R. § 37.3(a)(1) (2020);
 2. Orders Respondent to cease and desist from violating 5h(a)(1) of the Act and Regulation 37.3(a)(1);
 3. Orders Respondent to pay a civil monetary penalty in the amount of one hundred thousand dollars (\$100,000), plus post-judgment interest; 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 Respondent’s Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Section 5h(a)(1) of the Act, 7 U.S.C. § 7b-3(a)(1) (2018), and Regulation 37.3(a)(1), 17 C.F.R. § 37.3(a)(1) (2020).
- B. Respondent shall pay a civil monetary penalty in the amount of one hundred thousand dollars (\$100,000) (“CMP Obligation”) within ten days of the date of entry of this Order. If the CMP Obligation is not paid in full within ten days of the date of entry of this Order, then post-judgment interest shall accrue on 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 (2018).

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:

Commodity Futures Trading Commission
C/O ESC/AMK-326; RM 265
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
(405) 954-6569 office
(405) 954-1620 fax
9-AMC-AR-CFTC@faa.gov

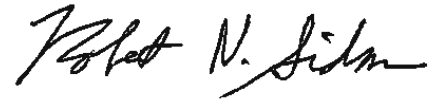
If payment is to be made by electronic funds transfer, Respondent shall contact Marie Thorne or her successor at the above address to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the CMP Obligation with a cover letter that identifies 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 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 their 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 undertake all steps necessary to ensure that all of their agents and/or employees under their authority or control understand and comply with this agreement.

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

By the Commission.

A handwritten signature in black ink, appearing to read "Robert N. Sidman". The signature is written in a cursive style with a horizontal line underneath it.

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

Dated: September 29, 2021