

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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Office of Proceedings
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9:14 am, Jun 24, 2022

In the Matter of:)

Starberry Limited,)

Respondent.)

) **CFTC Docket No. 22 –17**
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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 February 28, 2020 through March 17, 2020 (the “Relevant Period”), Respondent Starberry Limited (“Starberry”) violated Section 4d(a)(1) of the Commodity Exchange Act (“Act”), 7 U.S.C. § 6d(a)(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 has engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

In anticipation of the institution of this 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 and 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

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, Starberry operated as a futures commission merchant (“FCM”) while not registered with the Commission in any capacity. Specifically, Starberry accepted and placed orders, and accepted money in connection with those orders, from a foreign customer (“Foreign Customer”) for NYMEX West Texas Intermediate (“WTI”) crude oil futures contracts (“CL”). Starberry earned \$1,376,206.81 in commissions and fees from trading CL on behalf of the Foreign Customer.

In accepting Respondent’s Offer, the Commission recognizes the substantial cooperation of Starberry with the Division of Enforcement’s investigation of this matter. The Commission’s recognition of Respondent’s substantial cooperation is further reflected in the form of a reduced penalty.

B. RESPONDENT

Starberry Limited is a corporation organized and existing under the laws of Cyprus with its principal place of business in Nicosia, Cyprus. Starberry has never been registered with the Commission in any capacity.

C. FACTS

Prior to February 28, 2020, Starberry never traded any futures contract in any U.S. market. During the Relevant Period, however, Starberry began trading futures contracts in the United States for a Foreign Customer. After accepting margin payments of over \$400 million from the Foreign Customer, Starberry deposited that money in its proprietary trading account at a registered futures commission merchant. In total, Starberry executed more than 12,500 futures trades on NYMEX in March 2020 on behalf of the Foreign Customer. Starberry’s trading resulted in \$86 million in profits for the Foreign Customer during the Relevant Period and \$1,376,206.81 in commissions and fees for Starberry.

Starberry acted as an FCM without being registered.² Starberry accepted buy and sell orders for commodity futures contracts on behalf of the Foreign Customer and accepted money in connection with those orders.

Starberry substantially cooperated with the Commission’s investigation by confirming the identity of the Foreign Customer, producing documents with courtesy translations, providing the facts learned from and translation of foreign-language interviews Starberry conducted of key

² While scienter is not a requirement of a registration violation, Starberry represents, and the Commission has not found herein to the contrary, that Starberry did not act with the intent of violating Commission registration requirements.

individuals outside the United States as part of its internal investigation, and agreeing to maintain \$350 million in the United States pending the Commission's investigation.

III. LEGAL DISCUSSION

Under Section 1a(28) of the Act, 7 U.S.C. § 1a(28), a Futures Commission Merchant ("FCM") is defined, in relevant part, as:

an individual, association, partnership, corporation, or trust—

(i) that—

(I) is—

(aa) engaged in soliciting or in accepting orders for—

(AA) the purchase or sale of a commodity for future delivery; ...; and

(II) in or in connection with activities described in items (aa) ... accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

The Act requires anyone falling within the definition of an FCM, inter alia, to be registered with the Commission. *See* Section 4d(a)(1), 7 U.S.C. § 6d(a)(1). As described above, Starberry while not registered as an FCM, acted as an FCM as defined in Section 1a(28) of the Act by accepting orders for the purchase and sale of commodity futures contracts and accepting money in connection with those orders. (Starberry did not qualify for an exemption from registration available to certain foreign brokers under Regulation 3.10(c)(2) because it traded on behalf of the Foreign Customer in Starberry's name alone through Starberry's proprietary trading account.) Therefore, Respondent violated Section 4d(a)(1) of the Act.

IV. FINDINGS OF VIOLATION

Based on the foregoing, the Commission finds that, during the Relevant Period, Respondent violated Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1).

V. OFFER OF SETTLEMENT

Respondent has submitted the Offer in which it:

- 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 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, 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, 857-74 (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 Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1);
 - 2. orders Respondent to cease and desist from violating Section 4d(a)(1) of the Act;
 - 3. orders Respondent to pay a civil monetary penalty in the amount of one million three-hundred seventy-six thousand two hundred six dollars and eighty-one cents (\$1,376,206.81) plus any 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 the Offer.

VI. ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. Respondent shall cease and desist from violating Section 4d(a)(1) of the Act, 7 U.S.C. § 6d(a)(1).
- B. Respondent shall pay a civil monetary penalty in the amount of one million three-hundred seventy-six thousand two hundred six dollars and eighty-one cents (\$1,376,206.81) (the "CMP Obligation"). If the CMP Obligation is not paid in full within ten business days of the date of entry of this Order, then post-judgment interest shall accrue on the CMP 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 by other than electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

CFTC
C/O ESC/AMK-326; HQ 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 made by electronic funds transfer, Respondent shall contact the email address 9-AMC-AR-CFTC@faa.gov 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 Respondent and the name and docket number of this proceeding. 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 and 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 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 its successors and assigns 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. Disgorgement: Respondent agrees to pay disgorgement in the amount of one million three-hundred seventy-six thousand two hundred six dollars and eighty-one cents (\$1,376,206.81) ("Disgorgement Obligation"), representing the gains received in connection with such violation, within ten business days of the date of the entry of this Order. If the Disgorgement Obligation is not paid in full within ten business days of the date of entry of this Order, then post-judgment interest shall accrue on the unpaid portion of the Disgorgement 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 Disgorgement 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 by other than electronic funds transfer, the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

CFTC
C/O ESC/AMK-326; HQ 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 made by electronic funds transfer, Respondent shall contact the email address 9-AMC-AR-CFTC@faa.gov to receive payment instructions and shall fully comply with those instructions. Respondent shall accompany payment of the Disgorgement Obligation with a cover letter that identifies Respondent and the name and docket number of this proceeding. 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.

3. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission of partial payment of Respondent' CMP Obligation shall not be deemed a waiver of its obligation to make further payments pursuant to this Order, and shall not be deemed 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 this 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. Until such time as Respondent satisfies in full its Disgorgement Obligation and 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
Legal Division
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street N.W.
Washington, DC 20581

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

By the Commission



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

Dated: June 24, 2022