

II. FINDINGS

The Commission finds the following:

A. SUMMARY

From at least December 1, 2016 to September 1, 2019 (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 Respondent’s Guaranteed Introducing Brokers (“the GIBs”), 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 (2021).

In particular, Respondent’s supervisory system failed to detect repeated incidents in which brokers employed by Respondent or Respondent’s GIBs executed improper or fictitious trade transfer requests that violated the Commodity Exchange Act and Regulations. Through these transfers, which collectively persisted for several years, the brokers executed trades and then submitted improper or fictitious trade transfer requests to allocate winning trades to preferred customers or to accounts that they controlled or managed, while allocating losing trades to other accounts they controlled or managed.

For much of the Relevant Period, Respondent had no ability to adequately monitor or analyze such requests. After being notified by a customer in February 2018 of potential unauthorized trading by a broker at one of Respondent’s branch offices, Respondent commenced an internal investigation and identified suspicious trade transfers from and between a customer’s personal and corporate accounts. As part of its remediation, Respondent developed and introduced an Account Change Tool (“Tool”) to improve Respondent’s policies and procedures for addressing trade transfer requests and other account change requests. Nevertheless, because Respondent failed to timely implement the Tool, and due to the Tool’s own shortcomings and other deficiencies in Respondent’s policies and procedures, Respondent failed to detect or prevent brokers at the GIBs from making improper or fictitious trade transfers during the Relevant Period. In fact, even after the Tool was released and mandated for all Introducing Brokers (“IBs”), Respondent’s Compliance Department was only notified by Operations of one account change request by those GIB brokers during the Relevant Period.

In accepting Respondent’s Offer, the Commission recognizes the Respondent’s cooperation with the Division of Enforcement’s investigation of this matter. The Commission also acknowledges Respondent’s representations concerning its remediation in connection with this matter.

B. RESPONDENT

ADM Investor Services Inc. is a registered FCM headquartered in Chicago, Illinois.

C. FACTS

During the Relevant Period, employees and agents of Respondent or Respondent's GIBs regularly submitted requests to Respondent to transfer, allocate, or move existing trades between or among customers accounts.² According to the process in place at the beginning of the Relevant Period, the GIBs submitted trade transfer and other account change requests via email to a group inbox maintained by Respondent's Operations Department. A smaller team within Operations, known as the Customer Service team, primarily addressed such requests. According to Respondent's Compliance Manual in effect during the Relevant Period, requests relating to changes older than three days and/or with different tax IDs, among other types of requests, were to be referred to Respondent's Compliance Department. In addition, the Compliance Manual stated that certain scenarios "may constitute unusual activity within or among accounts and should be sent to Compliance for approval before proceeding, [including] [f]requent or large non-routine account transfers, [and] [f]requent movement of funds or positions between/among accounts...." Customer Service representatives had discretion to determine whether account changes satisfied the general guidelines in the Compliance Manual, and were encouraged to make a referral to Compliance if a request appeared suspicious. However, there were no set criteria as to what constituted "frequent or large non-routine account transfers," "frequent movement of funds or positions," or "suspicious" transfer requests. In addition, prior to the implementation of the Tool, Respondent had no system or technology in place for tracking or analyzing historical account change requests, and so it was difficult to measure the frequency of requests and individual brokers were not required to provide a reason for account change requests.

During the Relevant Period, Respondent's Compliance Manual also addressed how the Operations Department handled requests for commission credits by individual brokers, which also required approval by the Operations Department. The Compliance Manual provided, among other things, that: "Commission credits over \$1,000.00 require Compliance approval"; "Commission credits should not be a routine occurrence"; and "Anything frequent and/or questionable should be presented to Compliance." However, there were no set criteria as to what constituted "routinely occurring," "frequent," or "questionable." Rather, Respondent's Customer Service representatives had discretion to determine whether commission credit requests met the Compliance Manual guidelines or to make a referral to Compliance.

In or about February 2018, Respondent was made aware of a complaint by a customer against one of Respondent's senior brokers. The customer alleged that the broker had engaged in unauthorized trading. As part of its internal investigation, Respondent identified suspicious back office trade transfers between the customer's corporate account and the customer's personal account. Respondent terminated the broker and undertook efforts to develop enhanced procedures relating to account change requests.

Beginning in or about May 2018, Respondent began developing an Account Change Tool application that was designed to become the primary method through which Respondent's Introducing Brokers and branch offices could request trade transfers. In September 2018,

² The facts described herein pertain to two of Respondent's GIBs and a senior broker at one of Respondent's branch offices.

Respondent notified all Introducing Broker Managers of the Account Change Tool, and announced that effective October 1, 2018, “The Account Change Tool will be the ONLY method to request account change[s] involving trade transfers.”

Despite this initiative, as of the October 1, 2018 deadline, approximately half of Respondent’s Introducing Brokers were still not utilizing the Tool, and the Operations Department continued to receive email and/or phone requests to make account changes. On August 1, 2019, Respondent extended the deadline for using the Tool, issuing a memo to all IBs that mandated use of the Tool for moving positions effective September 1, 2019. Since September 1, 2019, nearly all of Respondent’s IBs have utilized the Tool to request account changes.

Even after the Account Change Tool was introduced, the application suffered from several key deficiencies. In particular, during the Relevant Period, the Account Change Tool had limited ability to track or analyze historical account change requests, or to analyze the profit & loss (P&L) impact of such requests. As a result, from the time the Account Change Tool was introduced through the end of the Relevant Period, Respondent’s Operations and Compliance Departments could only review for suspicious trading activity on an *ad hoc* basis, such as account changes that occurred routinely across the same accounts.

As a result of Respondent’s inadequate policies and procedures prior to introducing the Account Change Tool, and shortcomings of the Tool itself, Respondent failed to detect additional improper or fictitious trade transfers during the Relevant Period. On or about July 31, 2019, Respondent discovered that a broker at one of the GIBs had frequently provided instructions to change account numbers on various trades in order to improperly allocate profitable trades from accounts he serviced to certain other customer accounts that he serviced. The broker’s misconduct had gone undetected for years, beginning in November 2012 and ending with his termination in August 2019. In addition, the broker also paid his preferred customers trading volume “rebates” or commission “adjustments” over a several-year period. The practice ended in early 2017 when Respondent contacted the broker and questioned the frequency of the broker’s rebates. Moreover, following the broker’s termination, Respondent determined that the broker had been the subject of several customer complaints. These complaints had been filed with the GIB but never tendered to Respondent, despite the fact that they alleged multiple instances of wrongdoing by a single associated person and thus, under Respondent’s Compliance Manual, should have been reported to Respondent’s Compliance Department.

Separately, between August 2017 and June 2019, another of the GIBs helped his customer improperly allocate winning and losing commodity futures trades between the customer and the customer’s family members’ accounts. The broker submitted requests to move profitable trades from his customer’s account to the customer’s two family members’ accounts, over which the customer had power of attorney. The broker also submitted requests to move losing trades from the family members’ accounts to the customer’s account. Respondent was also unaware of the improper trade transfers until they were identified by an investigation conducted by an exchange with self-regulatory responsibilities.

Respondent's supervisory system failed to detect these incidents of improper or fictitious trade transfers, which collectively persisted over the course of several years. Indeed, the improper or fictitious trade transfers of both GIBs went undetected by Respondent's Compliance Department. Between June 2018 and the end of the Relevant Period, only one account change request by either of the two GIB brokers was forwarded by Respondent's Operations Department and tendered to its Compliance Department. Further, none of their improper or fictitious trade transfers were identified by Respondent's annual GIB audits.

As noted above, in accepting Respondent's Offer, the Commission recognizes the Respondent's cooperation with the Division of Enforcement's investigation of this matter. The Commission also acknowledges Respondent's representations concerning its remediation in connection with this matter. Respondent has represented that it has made a number of enhancements to its policies and procedures. For example, following the Relevant Period, Respondent has represented that it has enhanced the Account Change Tool to analyze the P&L impact of trade transfer requests, and to allow for testing of historical account transfer requests and thereby identify improper allocations of profitable trades between accounts. In addition, Respondent represents that it has hired additional staff since summer 2019 who, among other things, are responsible for monitoring and analyzing account changes involving Respondent's IBs and branch offices, ensuring that Respondent's IBs and branch offices properly implement and utilize the Account Change Tool, and coordinating Account Change Tool enhancements.

III. LEGAL DISCUSSION

Regulation 166.3, 17 C.F.R. § 166.3 (2021), states:

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 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 persons occupying a similar status or performing a similar function) relating to its business as a Commission registrant.

A violation of Regulation 166.3 is demonstrated 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 Gain Capital Group, LLC*, CFTC No. 20-70, 2020 WL 5876729, at *3 (Sept. 29, 2020) (citing *In re Murlas Commodities*, CFTC No. 85-29, 1995 WL 523563, at *9 (Sept. 1, 1995)); *Sansom Refining Co. v. Drexel Burnham Lambert, Inc.*, CFTC No. 82-R448, 1990 WL 282783, at *11 (Feb. 16, 1990) (noting that, under Regulation 166.3, registrants have "duty to develop procedures for the detection and deterrence of possible wrongdoing by [their] agents" (internal quotation omitted)); *In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at *17-19 (Aug. 11, 1992) (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); *see also In re Rosenthal Collins Grp., LLC*, CFTC No. 12-18, 2012 WL 1242406, at *6 (Apr. 12, 2012) (consent order) (respondent failed to perform supervisory duties diligently by not following its compliance procedures that were in place). 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.*, 1990 WL 282783 at *11 (quoting *Lobb v. J.T. McKerr & Co.*, CFTC No. 85-R185, 1989 WL 242384, at *11 (Dec. 14, 1989)). Moreover, a violation of Regulation 166.3 is an independent violation for which no underlying violation is necessary. *See In re Collins*, CFTC No. 94-13, 1997 WL 761927, at *10 (Dec. 10, 1997).

Evidence of 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 diligently supervise. *In re Paragon Futures Assoc.*, CFTC No. 88-18, 1992 WL 74261, at *14 (Apr. 1, 1992) (“The focus of any proceeding to determine whether Rule 166.3 has been violated will be on whether [a] review [has] occurred and, if it did, whether it was ‘diligent.’”).

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 account change requests submitted by brokers. Nevertheless, as a result of its inadequate supervision of trade transfers, Respondent failed to detect repeated incidents of improper or fictitious trade transfer requests submitted by brokers. Prior to Spring 2018, Respondent’s account review policies and procedures were inadequate because they failed to provide adequate guidance to Operations Department employees regarding how to address account change requests submitted by individual brokers. After discovering one of Respondent’s branch office broker’s practice of moving profitable and unprofitable trades between a corporate account and a personal account of the CEO and owner of the same corporation, Respondent undertook to improve its policies and procedures by developing the Account Change Tool. Even after the Account Change Tool was rolled out, Respondent failed to detect the above-referenced incidents in which brokers of the GIBs improperly transferred trades to benefit themselves or preferred customers. Finally, in spite of findings that one of the brokers also routinely issued commission rebates to customers, which Respondent stopped in early 2017, Respondent took no action during the Relevant Period to improve policies and procedures relating to commission rebates.

Respondent also failed to perform its supervisory duties diligently. Between June 2018 and the end of the Relevant Period, only one account change request submitted by either of the brokers employed by the GIBs engaging in improper or fictitious trade transfers was referred to Respondent’s Compliance Department. After the implementation of the Account Change Tool, Respondent failed to detect multiple instances of improper or fictitious trade transfers at the GIBs. In addition, Respondent’s audit program also failed to detect any improper or fictitious trade transfer requests at either of the brokers’ GIBs or Respondent’s branch office. Moreover, Respondent failed to take appropriate steps to ensure that multiple customer complaints against one of the GIB’s brokers were escalated to Respondent’s Compliance Department.

In summary, 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 (2021).

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, 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 (2021), 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 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; and

- 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 (2021);
 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 five hundred thousand dollars (\$500,000.00), plus post-judgment interest, within ten days of the date of entry of this Order;
 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:

1. Respondent shall cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2021);
2. Respondent shall pay a civil monetary penalty in the amount of five hundred thousand dollars (\$500,000.00) ("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.

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
Division of Enforcement
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 Tonia King 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.

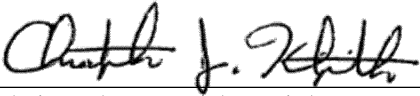
3. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
 1. **Public Statements:** Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in 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 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 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 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 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: September 29, 2022