

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**



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**In the Matter of:** )  
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**Advantage Futures LLC,** )  
 ) **CFTC Docket No. 23-45**  
**Respondent.** )  
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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 in or about July 2018 to at least June 2022 (the “Relevant Period”), Advantage Futures LLC (“Respondent” or “Advantage”) violated Regulation 166.3, 17 C.F.R. § 166.3 (2022), of the Commission Regulations (“Regulations”). 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.<sup>1</sup>

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<sup>1</sup> 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, a futures commission merchant (“FCM”) registered with the Commission, failed to diligently supervise the handling of commodity interest accounts, which resulted in incomplete and inadequate oversight of its surveillance of customers’ trading activity for disruptive trading in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2022). Specifically, Respondent failed to diligently supervise certain customer trade and order data, causing trades for millions of contracts to go without surveillance over a four-year period.

Respondent’s system for surveilling customer order and trade data failed in at least three separate instances: (1) Respondent’s surveillance vendor failed to process data for Exchange A futures contracts between July 2018 and December 2020; (2) Respondent’s surveillance vendor did not receive data from Exchange B between June 2019 and June 2022; and (3) Respondent failed to send to its surveillance vendor the order and trade data for a percentage of Respondent’s customers’ total trading on Exchange C and Exchange D between July 2018 and June 2022. Therefore, Respondent did not surveil certain order and trade data for those exchanges during the time periods noted.

Respondent learned of its failure to surveil Exchange A order and trade data in the course of responding to inquiries by Exchange A in 2020. During the course of the Commission’s subsequent investigation, by June 2022 Respondent learned of its failures to surveil data from Exchanges B, C, and D.

### B. RESPONDENT

**Advantage Futures LLC** is a Delaware limited liability company formed in January 2003 with a primary business address at 141 West Jackson Boulevard, Suite 3900, Chicago, Illinois 60604. Advantage has been registered as an FCM since March 5, 2003.

### C. FACTS

Respondent’s policies and procedures stated that customer trades would be processed through complex trade analysis software in order to surveil them for disorderly trading. Specifically, Respondent’s policies and procedures represented that it “utilize[d] an electronic system to monitor for potential client disruptive trade practices” and that the “system analyze[d] both orders and executions with full depth-of-market data and provide[d] output based on prior day activity.” Respondent represented that it would surveil customer orders and executions for several types of disruptive trading, including spoofing. To accomplish this, Respondent retained a surveillance vendor to receive and process customer trade and order data.

During the Relevant Period, however, Respondent did not fully comply with its policies and procedures and did not actually surveil all of its customers’ order and execution data on exchanges that it cleared for disruptive trading. Rather, Advantage failed to process and surveil three separate sets of customer order and execution data over three distinct periods.

First, Respondent, through its surveillance vendor,<sup>2</sup> failed to process some customer order and execution data for Exchange A during the period from July 2018 to December 2020. This lapse occurred as a result of Respondent's vendor dropping one of the Exchange A data feeds after testing was complete and surveillance went live. Respondent did not ensure that its vendor was receiving and processing all customer trade data. As a result of this data feed issue, certain of Respondent's customers' trading in Exchange A products were not surveilled for nearly two and a half years. The total trade volume not processed or surveilled due to this error was over 7.8 million cleared contracts, which comprised approximately 16.5% of Respondent's total trading volume on Exchange A and 1.6% of Respondent's total volume on all exchanges during the period in which trades were not being surveilled. Respondent discovered this failure in the course of its response to an inquiry from Exchange A regarding potentially disruptive trading carried out by one of Respondent's customers.

Subsequently, the Commission opened an investigation into Respondent's failure to process Exchange A order and execution data and to surveil its customers' trades. During the course of that investigation, Advantage discovered two additional instances in which it had failed to surveil customer orders and executions.

Respondent discovered that it had failed to process customer order and execution data for Exchange B between June 2019 and June 2022. When Respondent switched to a new clearing broker in June 2019, Respondent's surveillance vendor failed to switch their Exchange B data feed connections from Respondent's prior clearing broker to its new clearing broker. The total trade volume not processed or surveilled due to this error was over 3.4 million contracts.

Finally, Respondent failed to process customer order and execution data for certain customer trades on Exchanges C and D between July 2018 and June 2022. Respondent caused this failure by neglecting to upload audit logs for certain customer proprietary trading systems to its surveillance vendor during the Relevant Period. Respondent's failure prevented its surveillance vendor from surveilling the order and execution data for certain of Respondent's customers on Exchanges C and D. The total trade volume not processed or surveilled due to this error was over 1.5 million cleared contracts.

In total, all of Respondent's failures caused over 12.8 million cleared contracts not to be processed or surveilled between July 2018 and June 2022. This total volume represents nearly 1.5% of Respondent's customer's trading volume during that four-year period.

### **III. LEGAL DISCUSSION**

Advantage failed to diligently supervise the handling of commodity interest accounts which resulted in incomplete and inadequate oversight of its surveillance of customers' trading activity for disruptive trade practices in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2022). That Regulation requires:

Each Commission registrant, except an associated person who has no supervisory duties, must diligently supervise the handling by its partners, officers, employees

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<sup>2</sup> On or around July 2018, Respondent retained a new vendor to provide its primary surveillance tool for monitoring orders and trades by its customers on a variety of exchanges, including Exchanges A, B, C, and D.

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 an independent violation for which no underlying violation of the Act or regulations is necessary. *See In re Collins*, CFTC No. 94-13, 1997 WL 761927, at \*10 (Dec. 10, 1997).

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 GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at \*19 (Aug. 11, 1992), *aff'd sub nom. Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993); Customer Protection Rules, 43 Fed. Reg. 31,866, 31,889 (July 19, 1978) (Adopting Regulation 166.3). For a registrant to fulfill its duties under Regulation 166.3, it must both design an adequate program of supervision and ensure that the program is followed. *See CFTC v. Carnegie Trading Grp., Ltd.*, 450 F. Supp. 2d 788, 805 (N.D. Ohio 2006) (finding introducing broker failed to develop and implement procedures for the detection and deterrence of possible wrongdoing by broker's agents); *GNP Commodities*, 1992 WL 201158, at \*17-19 (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). "A showing that the registrant lacks an adequate supervisory system can be sufficient" to establish a breach of duty under Regulation 166.3. *In re Collins*, 1997 WL 761927, at \*10. 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 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. Respondent violated Regulation 166.3 by, among other things, (i) failing to ensure that the company followed its procedures for surveillance; and (ii) failing to ensure that its customers' order and execution data was processed for surveillance for disruptive trading.

#### **IV. FINDINGS OF VIOLATION**

Based on the foregoing, the Commission finds that, during the Relevant Period, Advantage Futures LLC violated Regulation 166.3, 17 C.F.R. § 166.3 (2022).

#### **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 (2022) 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. Agrees for purposes of the waiver of any and all rights under the Equal Access to Justice Act and the Small Business Regulatory Enforcement Fairness Act of 1996, specified in paragraphs 6 and 7 above, that the Commission is the prevailing party in this action;
- E. 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
- F. 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 (2022);
  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 three hundred ninety-five thousand dollars (\$395,000), plus any post-judgment interest;

4. Orders Respondent and its successors and assigns to comply with the conditions and undertakings consented to in Part VI of this Order; and
- G. Represents that it has already taken steps to ensure that, going forward, it receives and surveils trade and order data for exchanges that it clears, including, but not limited to, the following:
1. Retained a new surveillance vendor which receives data directly from exchanges Advantage clears and regularly monitors data connections;
  2. Reprocessed and reviewed all data that was not originally processed in real time;
  3. Hired an additional senior risk manager whose primary focus will be trade surveillance;
  4. Revised its written policies and procedures to reflect its current surveillance activities and the responsible departments or personnel;
  5. Created procedures to confirm that its vendor receives and processes trade and order data for all exchanges it clears. Advantage now receives daily reports of the total number of messages received and processed from each exchange, which are regularly reviewed by employees in Advantage's Credit/Risk Department to verify connectivity to exchange data feeds for the entire trading day and confirm that trade and order data is received over those feeds.

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 (2022).
- B. Respondent shall pay a civil monetary penalty in the amount of three hundred ninety-five thousand dollars (\$395,000) ("CMP Obligation"). If the CMP Obligation is not paid immediately in full, 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-amz-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.

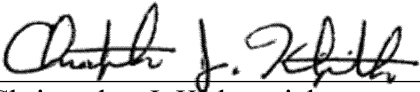
- C. Respondent and its successors and assigns shall comply with the following conditions and undertakings set forth in the Offer:
1. **Public Statements:** Respondent agrees that neither it nor any of its successors and assigns, agents or employees under its authority or control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in 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, the subject matter of 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 20, 2023