UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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Office of Proceedings
Proceedings Clerk
11:52 am, Jun 29, 2020

In the Matter of:	)	
Cunningham Commodities, LLC	)	**CFTC Docket No. 20-20**
Respondent.	)	

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" or CFTC") has reason to believe that during the period September 2018 through December 2019 ("Relevant Period"), Cunningham Commodities, LLC ("Respondent") violated Regulation 166.3, 17 C.F.R. 166.3 (2019), of the Commission Regulations ("Regulations") promulgated under the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1-26 (2018). Moreover, the Commission has reason to believe that Respondent is also liable for certain obligations of an introducing broker ("IB") pursuant to a guarantee agreement ("Guarantee") that it entered into with that IB ("Entity A"), pursuant to Regulation 1.17(a)(2)(ii), 17 C.F.R. § 1.17(a)(2)(ii) (2019). 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 and establishing Respondent's liability under the Guarantee.

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, except for liability under the Guarantee, which Respondent admits pursuant to the terms below, 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] Respondents 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 (footnote continued)

II. FINDINGS

The Commission finds the following:

A. SUMMARY

During the Relevant Period, Respondent failed to diligently supervise accounts in violation of Regulation 166.3, 17 C.F.R. § 166.3 (2019). Specifically, Respondent, through its officers, employees, and agents, missed indications that Entity A was defrauding customers through accounts carried by Respondent. Respondent allowed Entity A to continue introducing accounts and receiving commissions from trading in those accounts. Additionally, in March 2019, Respondent executed the Guarantee with Entity A pursuant to Regulation 1.17(a)(2)(ii), 17 C.F.R. § 1.17(a)(2)(ii) (2019). Accordingly, Respondent is jointly and severally liable with the Entity A for all restitution and disgorgement obligations imposed against Entity A in any related CFTC enforcement proceeding for Entity A's conduct during the period of the Guarantee.

B. RESPONDENT

Respondent Cunningham Commodities, LLC ("Cunningham Commodities") is a registered futures commission merchant ("FCM") with its principal place of business in Itasca, Illinois.

C. FACTS

1. Entity A Was Engaged in a Scheme to Defraud Customers

From at least June 2015 through December 2019, Entity A, a registered IB, solicited customers and prospective customers to participate in its options on commodity futures spread program ("Options Program").

In the Options Program, Entity A would provide customers with trading recommendations. Each recommendation was for a different spread trade typically involving out-of-the-money options on futures contracts traded on certain designated contract markets. Every participating customer received the same trading recommendations, with the only difference being the number of contracts that Entity A advised each customer to trade.

Entity A did not utilize powers of attorney or letters of direction in connection with the Options Program. Entity A instructed customers to simply respond "yes" in a text or email to accept the recommended trades. Entity A would then forward the customer orders to its FCM, either over the phone or via an electronic trading platform.

(footnote continued)
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.

2. Respondent Knew that Entity A Was Trading Customer Accounts Pursuant to a "Program"

In August 2018, Entity A executed an IB agreement with Respondent. In September 2018, Entity A moved substantially all its customer accounts from its previous FCM to Respondent. When moving the customer accounts to Respondent, Entity A's current owner and Chief Executive Officer ("Principal") advised Respondent's Chief Compliance Officer ("Respondent's CCO") that Entity A was trading customer accounts pursuant to a "program." The Principal explained that Entity A "manage[s]" all the trading for its customers, and that Entity A did not want its customers placing trades. Respondent knew that Entity A was not registered as a commodity trading advisor ("CTA").

3. Respondent Knew that Entity A's Customers Were Losing Money

From the outset of the Entity A relationship, Respondent knew that Entity A's customers were losing money trading pursuant to the Options Program. Respondent knew this in part from communications between Respondent's CCO and Entity A's customers. These communications include the following:

- In a September 2018 call, an Entity A employee explained to Respondent's CCO that Entity A's older accounts had lower commission rates because they had been "depleted."

- In November 2018, Respondent's CCO received calls from two of Entity A's customers. One customer accused Entity A of defrauding him. The other customer expressed anger over losses from Entity A's trading program. Respondent's CCO advised an Entity A employee of the calls. Respondent's CCO agreed that it was "weird" to receive two customer complaints in the same day. The Entity A employee acknowledged that Entity A's associated persons ("APs") can be "too aggressive" and make "promises that can't be kept."

- In January 2019, Respondent's CCO received a letter from an Entity A customer enclosing a signed power of attorney and a post-it note saying, "Please restore this account to where it should be."

- In February 2019, an Entity A customer called Respondent's CCO and explained that he had been deployed overseas in the military. When he returned to the States, the customer told Respondent's CCO, he was surprised to learn that Entity A had lost $17,000 of the money in his account.

Moreover, in January 2019, Respondent's CCO prepared 1099s for customers introduced by Entity A. In so doing, the CCO learned that substantially all of Entity A's customers lost money in 2018.

Despite the foregoing, Respondent continued to allow Entity A to introduce accounts and collect commissions.

4. Respondent Knew that NFA Was Investigating Entity A

On March 18, 2019, Entity A's Principal advised Respondent's CEO that Entity A was undercapitalized. The Principal asked Respondent's CEO whether Respondent would be willing to execute a guarantee in favor of Entity A so Entity A could continue operating.[2]

Respondent's CEO discussed the potential guarantee with Respondent's CCO. The CCO noted that Entity A "bring[s] in a lot of guys that are retired so we would have to know how they solicit business." The CEO agreed, acknowledging that "they [Entity A] do have a lot of IRAs."

On March 19, 2019, the Principal forwarded Respondent a letter from the National Futures Association ("NFA") dated December 6, 2018. In that letter, NFA wrote, "[Entity A] used misleading and deceptive solicitations and communications to entice investment in a program that the firm know[s] has consistently lost money for substantially all customers." The letter went on to detail numerous alleged false and misleading statements made by Entity A's APs to NFA investigators posing as prospective customers.

The Principal explained to Respondent's CCO that Entity A was changing its solicitations, though the Principal "agreed to disagree" with NFA about the misleading nature of the previous solicitations. The Principal also advised Respondent's CCO that it was undertaking substantial changes at Entity A to avoid further issues, including but not limited to terminating individuals responsible for the above-referenced problematic statements. The CCO recommended that Entity A record its AP's sales calls, and the Principal agreed to do so. No employee of Respondent requested or listened to those calls during the operation of the Guarantee.

5. Respondent Executed a Guarantee in Favor of Entity A

Despite the above, in March 2019, Respondent executed the Guarantee with Entity A. The Guarantee provides that:

> Cunningham [Commodities] guarantees performance by the introducing broker of, and shall be jointly and severally liable for, all obligations of the introducing broker under the Commodity Exchange Act . . . and the rules, regulations and orders which have been or may be promulgated thereunder with respect to the solicitation of and transactions involving all commodity customer [and] option customer . . . accounts of the introducing broker entered into on or after the date of this agreement.

The Guarantee provides that Entity A shall be considered an agent of Respondent for the period of the Guarantee. As such, the Guarantee provides, Respondent is obligated to supervise Entity A.

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[2] Regulation 1.17(a)(1)(iii)(A), 17 C.F.R. § 1.17(a)(1)(iii)(A) (2019), provides that a so-called "independent" IB must maintain adjusted net capital equal to or in excess of, in relevant part, $45,000. An IB need not, however, maintain the minimum net capital if the IB is party to a qualifying guarantee agreement with an FCM, in which case the IB would become a "guaranteed" IB ("GIB"). 17 C.F.R. § 1.17(a)(2)(ii).

6. Respondent Was Aware of Continuing Losses in Entity A's Customer Accounts

Respondent continued to see losses in Entity A's customer accounts after entering into the Guarantee. On March 29, 2019, just a week after the Guarantee was signed, Respondent's CCO advised Respondent's CEO that a "bunch" of Entity A's accounts were on margin call. Several of these accounts, the CCO noted, were IRA accounts trading despite very small balances.

Respondent eventually terminated its IB agreement with Entity A in December 2019, after Commission Staff provided Respondent with a notice pursuant to Commission Rule 11, Appendix A, 17 C.F.R. Part 11, Appendix A (2019), advising Respondent that it might be named in a proposed enforcement proceeding. During the almost ten-month duration of the Guarantee from March 2019 through December 2019, Entity A's customer accounts carried by Respondent lost approximately $640,000 to trading, commissions, and fees.

III. LEGAL DISCUSSION

A. Respondent Failed to Diligently Supervise Accounts in Violation of Regulation 166.3

Regulation 166.3, 17 C.F.R. § 166.3 (2019), provides that all registrants, including FCMs, must "diligently supervise" the handling by their partners, officers, employees, and agents (or persons occupying a similar status or performing a similar function) of all commodity interest accounts carried or operated 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 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 Murlas Commodities*, CFTC No. 85-29, 1995 WL 523563, at *9 (Sept. 1, 1995); *In re GNP Commodities, Inc.*, CFTC No. 89-1, 1992 WL 201158, at *18 (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), *aff'd as modified sub nom Monieson v. CFTC*, 996 F.2d 852 (7th Cir. 1993); *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.'").

The nature of the underlying violations is probative of a registrant's failure to supervise, i.e., "if the violations which occurred are of a type which should be detected by a diligent system of supervision, either because of the nature of the violations or because the violations have occurred repeatedly." *CFTC v. Matrix Trading Grp., Inc.*, No. 00-8880-CIV, 2002 WL 31936799, at *10-11 (S.D. Fla. Oct. 3, 2002) (holding IB failed to supervise where no procedures existed to detect fraud). The presence of red flags that indicate potential unlawful activity, such as customer complaints or known incidents of misconduct, is also probative. *Monieson*, 996 F.2d at 862 (finding FCM failed to supervise where defendant, chairman of an

FCM, "dismissed complaints out of hand and never got around to ordering a thorough in-house investigation or any other action, even when he knew the gravity of the situation").[3]

An FCM violates Regulation 166.3 when it fails to detect fraud related to accounts introduced by an IB, particularly a GIB, in the face of questionable or potentially unlawful activity, either by not adopting or not following policies and procedures reasonably designed to detect fraud. *See, e.g.*, *In re R.J. O'Brien & Assocs., LLC*, CFTC No. 13-10, 2013 WL 55701, at *2, *4 (Jan. 2, 2013) (consent order) (finding that FCM's failure to follow its procedures regarding bunched orders, and FCM's failure to employ adequate procedures to monitor, detect, and deter unusual activity, violated Regulation 166.3 where FCM failed to apprehend allocation scheme by GIB); *In re Refco, Inc.*, CFTC No. 99-12, 1999 WL 325332, at *4 (May 4, 1999) (consent order) (finding FCM violated Regulation 166.3 by, among other things, failing to investigate or inadequately investigating questionable activity after it had been brought to its attention regarding an IB's trade allocation scheme); *In re Vaughn*, CFTC No. 02-06, 2002 WL 272210, at *1 (Feb. 25, 2002) (consent order) (finding FCM's COO failed to detect fraud by two IBs, "[d]espite the presence of several indicia of churning").

Respondent's supervision of accounts introduced by Entity A falls below the level of diligent supervision. Respondent knew that Entity A offered a "trading program" to customers even though Entity A was not registered as a CTA. Respondent knew that substantially all customers lost money under Entity A's trading program. Respondent knew that many of Entity A's customers were senior citizens, and that many of the accounts traded were retirement accounts. Entity A had acknowledged to Respondent that Entity A's brokers could be "too aggressive" and might make "promises that can't be kept."

Prior to entering into the Guarantee and during the pendency of the Guarantee, Respondent did not engage in a formal investigation into the nature of Entity A's trading strategies, and did not investigate indications of issues related to the marketing of the Options Program by Entity A. This is despite the fact that Respondent was aware of facts from customer complaints and Respondent's conversations with Entity A about those complaints. Respondent did not take prompt action upon learning of the foregoing.

Despite knowing that Entity A was under investigation for alleged fraud by NFA, Respondent chose to enter into the Guarantee. Although Respondent required Entity A to record its solicitation calls, Respondent had not listened to those calls as of the date that the Guarantee was terminated. Meanwhile, Respondent continued to watch Entity A customer accounts decline in value.

[3] *See also CFTC v. Sidoti*, 178 F.3d 1132, 1137 (11th Cir. 1999) (finding a supervision violation where defendants "failed to establish or maintain meaningful procedures for detecting fraud by their employees and [ ] knew of specific incidents of misconduct, yet failed to take reasonable steps to correct the problems").

B. Respondent is Liable under the Guarantee

Regulation 1.17(a)(1)(iii)(A), 17 C.F.R. § 1.17(a)(1)(iii)(A) (2019), provides that an IB must maintain adjusted net capital equal to or in excess of, in relevant part, $45,000. An IB need not maintain the minimum net capital requirement if the IB is party to a qualifying guarantee agreement with an FCM. 17 C.F.R. § 1.17(a)(2)(ii). The agreement must be in the form mandated by Form 1-FR-IB (Part B). 17 C.F.R. § 1.3 (2019) (*Guarantee Agreement*). A GIB's operations are guaranteed by an FCM, and all the GIB's accounts must be carried by the guaranteeing FCM.

By executing such a guarantee, the FCM "guarantees performance by the introducing broker of, and shall be jointly and severally liable for, all obligations of the introducing broker under the Act and the rules, regulations and orders promulgated thereunder." *In re Matter of Paragon Futures Ass'n*, CFTC No. 88-18, 1992 WL 74261, at *16 (Apr. 1, 1992) (finding FCM was liable for the unauthorized trading violations by an employee of its guaranteed IB "because of the existence of [the] guarantee agreement.").

An FCM's decision to guarantee an IB is a "voluntary choice"; an FCM asked by an introducing broker for a guarantee may simply decline, or may choose to work with its own APs, or with better-capitalized IBs. *First Am. Disc. Corp. v. CFTC*, 222 F.3d 1008, 1013 (D.C. Cir. 2000) (rejecting challenge to guarantee provisions).

Respondent executed a guarantee in favor of Entity A. Respondent is therefore jointly and severally liable for Entity A's obligations under the Act and Regulations. Respondent has no defense to, and is strictly liable for, any restitution or disgorgement Entity A may be obligated to pay arising from conduct that occurred during the period of the Guarantee (March 2019 through December 2019), not to exceed $640,000.

IV. FINDINGS OF VIOLATION AND LIABILITY UNDER GUARANTEE

Based on the foregoing, the Commission finds that, during the Relevant Period, Cunningham Commodities, LLC violated Regulation 166.3, 17 C.F.R. 166.3 (2019).

Moreover, the Commission finds that Cunningham Commodities is strictly liable pursuant to the Guarantee, *see* Regulation 1.17(a)(2)(ii), 17 C.F.R. § 1.17(a)(2)(ii) (2019), for any restitution or disgorgement obligations imposed against Entity A in any related CFTC enforcement proceeding for its conduct during the period of the Guarantee, in an amount not to exceed $640,000.

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 (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. pt. 148 (2019), 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;

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 (2019), and is liable under the Guarantee pursuant to Regulation 1.17(a)(2)(ii), 17 C.F.R. § 1.17(a)(2)(ii) (2019);

2. Orders Respondents 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), to be paid in twenty (20) equal installments of twelve thousand five hundred dollars ($12,500), with each such payment due on fifth calendar day of each month, or on the next nearest day which is not a weekend or federal holiday; and

4. Orders Respondent to pay pursuant to the Guarantee the full amount of any restitution and disgorgement obligations imposed against Entity A in any related CFTC enforcement proceeding attributable Entity A's conduct during the period March 2019 through December 2019, in an amount not to exceed six hundred forty thousand dollars ($640,000), within thirty (30) days of the entry of a final order in any related CFTC enforcement action against Entity A, or on such other terms as the CFTC may agree to; such final order may take the form of a default judgment, consent order, or any other resolution of the Commission's claims against Entity A.

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 (2019).

2. Respondent shall pay a civil monetary penalty in the amount of two hundred fifty thousand dollars ($250,000), to be paid in twenty (20) equal installments of twelve thousand five hundred dollars ($12,500), with each such payment due on fifth calendar day of each month, or on next nearest day which is not a weekend or Federal Holiday ("CMP Obligation").

3. 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
   6500 S. MacArthur Blvd.
   HQ Room 181
   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.

4. Respondent shall pay pursuant to the Guarantee the full amount of any restitution or disgorgement obligations imposed against Entity A in any related CFTC enforcement proceeding attributable Entity A's conduct during the period March 2019 through December 2019, in an amount not to exceed six hundred forty thousand dollars ($640,000), within thirty (30) days of the entry of a final order in any related CFTC enforcement proceeding, or on such other terms as CFTC may agree to; such final order may take the form of a default judgment, consent order, or any other resolution of any Commission's claims against Entity A ("Guarantee Obligation");

5. To effect payment by Respondent and the distribution of restitution to Entity A's customers, the Commission appoints NFA as "Monitor." The Monitor shall receive payments of the Guarantee Obligation from Respondent and make distributions as set forth below. Because the Monitor is not being specially compensated for these services, and these services are outside the normal duties of the Monitor, it shall not be liable for any action or inaction arising from its appointment as Monitor other than actions involving fraud.

   Respondent shall make its payments of the Guarantee Obligation in the name of the "[Entity A] Settlement Fund" and shall send such payments by electronic funds transfer, or U.S. postal money order, certified check, bank cashier's check, or bank money order to the Office of Administration, National Futures Association, 300 South Riverside Plaza, Suite 1800, Chicago, Illinois 60606, under a cover letter that identifies the paying 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.

   The Monitor shall oversee Respondent's Guarantee Obligation and shall have the discretion to determine the manner of distribution of funds in an equitable fashion to the Respondent's customers or may defer distribution until such time as the Monitor may deem appropriate.

   In the event that the amount of payments of the Guarantee Obligation to the Monitor are of a *de minimis* nature such that the Monitor determines that the administrative cost of making a restitution distribution is impractical, the Monitor may, in its discretion, treat such restitution payments as civil monetary penalty payments, which the Monitor shall forward to the Commission, as discussed above. In such event, those payments shall not serve to reduce, or otherwise be credited towards, the CMP Obligation above, but shall be paid in addition to the CMP Obligation. To the extent any funds accrue to the U.S. Treasury for satisfaction of Respondent's Guarantee Obligation, such funds shall be transferred to the Monitor for disbursement in accordance with the procedures set forth in this Order.

To the extent that disgorgement and not restitution is imposed against Entity A in any related CFTC enforcement proceeding, Respondent shall pay the Guarantee 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
6500 S. MacArthur Blvd.
HQ Room 181
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 Guarantee 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.

6. 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 with Monitor: Respondent shall cooperate with the Monitor as appropriate to provide such information as the Monitor deems necessary and appropriate to identify Respondent's customers, whom the Monitor, in its sole discretion, may determine to include in any plan for distribution of any restitution payments. Respondent shall execute any documents necessary to release funds that it has in any repository, bank, investment or other financial institution,

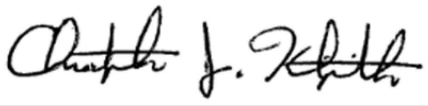
wherever located, in order to make partial or total payment toward the Guarantee Obligation.

3. 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.

4. Partial Satisfaction: Respondent understands and agrees that any acceptance by the Commission or the Monitor of any partial payment of Respondent's CMP Obligation or Guarantee 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.

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: June 29, 2020