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Clarifications

UNITED STATES OF AMERICA
BEFORE THE
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:

Velocity Futures, LLC

Respondent.

: CFTC Docket No. 12-02
:
: ORDER INSTITUTING PROCEEDINGS
: PURSUANT TO SECTIONS 6(c) AND 6(d)
: OF THE COMMODITY EXCHANGE ACT
: AND MAKING FINDINGS AND
: IMPOSING REMEDIAL SANCTIONS
:

I.

The Commodity Futures Trading Commission (the "Commission" or "CFTC") has reason to believe that Velocity Futures, LLC ("Velocity" or the "Respondent"), a registered Futures Commission Merchant ("FCM"), has violated Commission Regulation ("Regulation") 166.3, 17 C.F.R. § 166.3 (2011). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and they hereby are, instituted to determine whether the Respondent engaged in the violations set forth herein, and to determine whether an order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, the 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, the Respondent acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act and Making Findings and Imposing Remedial Sanctions ("Order").¹

¹ The Respondent consents to the use of these findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that the Respondent does not consent to the use of this Order or the Offer, or the findings or conclusions in this Order consented to in the Offer, as the sole basis for any other proceeding brought by the Commission, other than in a proceeding in bankruptcy or to enforce the terms of this Order. Nor does the Respondent consent to the use of the Offer or this Order, or the findings or conclusions in the Order consented to in the Offer, by any other party in any other proceeding.

III.

A. Summary

From July 2003 until at least December 30, 2007 (the “relevant period”), Velocity failed to diligently supervise its employees and agents in their handling of customer accounts carried or operated by Velocity. Specifically, Velocity failed to supervise diligently the handling of customer accounts carried or operated by Velocity, and introduced by El Toro Consult S.L. (“El Toro”), an independent, non-guaranteed Foreign Introducing Broker (“FIB”) and Commodity Trading Advisor (“CTA”) located in Europe, and an agent or a person performing a similar function with respect to Velocity, when it failed to conduct a diligent background check on the principal of El Toro, once Velocity was on notice that the principal was an individual with a potential criminal background. Also, Velocity failed to develop and implement an adequate system to monitor the trading of customer accounts by third parties, and agents or persons performing a similar function, such as El Toro, to alert the firm and its customers to potential churning.

Accordingly, the Respondent violated Regulation 166.3, 17 C.F.R. § 166.3 (2011).

B. Respondent

Velocity Futures, LLC a/k/a Velocity Futures, LP is registered with the National Futures Association (“NFA”) (NFA No.: 0317696) as an FCM, with its principal place of business located at 1220 Augusta Drive, Suite 600, Houston, TX 77057.

C. Facts

Velocity’s Failure to Supervise

On July 25, 2003, Velocity entered into an FIB agreement with a Spanish firm, El Toro, which was operated by Norbert Grupe (“Grupe”), a resident of Mallorca, Spain and the principal of El Toro. At the time of the signing of the FIB agreement, Velocity conducted a cursory background check on Grupe, which revealed no significant information. (Pursuant to Regulation 3.10, FIBs and CTAs are exempt from registration provided they are located outside of the U.S. and their customers are also located outside of the U.S.) Several months later, however, Velocity learned that an individual with the same name had been convicted of felony grand theft in Florida. After learning of the felony conviction of an individual named Norbert Grupe, Velocity took no further steps to investigate or to determine if it had entered into an FIB relationship with the same individual convicted of a felony. Rather, Velocity allowed Grupe to continue to introduce and to trade customer accounts through 2007. Grupe was, in fact, the convicted felon and a fugitive from the State of Florida Department of Corrections.

In addition, Velocity, which operated almost exclusively through electronic means, failed to develop and implement an adequate system designed to review trading in its customer accounts controlled by third parties. Velocity did not implement procedures designed to detect potential churning in customer accounts traded by third parties during the relevant period. In fact, the principal of El Toro, Grupe, traded several customer accounts throughout the relevant

period that were not subject to any evaluation or review with respect to their commission to equity ratios. A CFTC review of the three major customer accounts traded by Grupe, and carried or operated by Velocity, found commission-to-equity ratios that signaled potential churning. The first account, actively traded over a 20-month period, had a monthly commission-to-equity ratio that ranged from 3.10% to 86.45%, and averaged 34.89% per month over the 20-month period. The second account, actively traded for 16 months, had monthly commission-to-equity ratios that ranged from 3.11% to 89.07%, and averaged 29.45%. The third account had a commission-to-equity ratio that averaged 30.42% for three of its most active months. With no procedure in place to evaluate commission-to-equity ratios, this trading was never subject to any review or challenge by Velocity.

D. Legal Discussion

Regulation 166.3 requires that every Commission registrant (except Associated Persons who have no supervisory duties) "diligently supervise the handling by its partners, employees and agents, or persons performing a similar function" of all of its commodity interest accounts and activities relating to its business as a registrant. In order to prove a violation of Regulation 166.3, it must be demonstrated that either: (1) the registrant's supervisory system was generally inadequate; or (2) the registrant failed to perform its supervisory duties diligently. *In re Murlas Commodities*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,485 at 43,161 (CFTC Sept. 1, 1995); *In re Paragon Futures Assoc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,266 at 38,850 (CFTC Apr. 1, 1992); *Bunch v. First Commodity Corp. of Boston*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,352 at 39,168-69 (CFTC Aug. 5, 1992).

Under Regulation 166.3, a registrant has a "duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents." *Sansom Refining Co. v. Drexel Burnham Lambert, Inc.* [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,596 at 36,566 (CFTC Feb. 16, 1990) (internal quotation marks and citation omitted). Thus, "a showing that the registrant lacks an adequate supervisory system [standing alone] can be sufficient" to establish a breach of duty under Regulation 166.3. *In re Collins*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,194 at 45,744 (CFTC Dec. 10, 1997). The lack of an adequate supervisory system can be established by showing that the registrant failed to develop proper procedures for the detection of wrongdoing. *CFTC v. Trinity Fin. Group Inc.*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,179 at 45,635 (CFTC Sept. 29, 1997) (respondent failed to establish and maintain meaningful procedures for deterring and detecting fraud by their employees, and knew of specific incidents of misconduct but failed to take reasonable steps to correct the problems in violation of Regulation 166.3), *aff'd in relevant part, vacated in part and remanded sub nom. Sidoti v. CFTC*, 178 F.3d 1132 (11th Cir. 1999).

As described above, Velocity failed to develop and to implement any system to monitor the trading of customer accounts by third party independent, non-guaranteed FIBs, such as El Toro, which was acting as Velocity's agent or person performing a similar function, and Velocity failed, when on notice of a potentially significant fact that could materially affect its customers' accounts, to properly investigate that potentially significant fact. Accordingly, Velocity failed to diligently supervise the handling by its partners, employees and agents of all of its commodity

interest accounts and activities relating to its business as a registrant and therefore violated Regulation 166.3.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Velocity violated Regulation 166.3, 17 C.F.R. § 166.3 (2011).

V.

OFFER OF SETTLEMENT

The Respondent has submitted an Offer in which it acknowledges service of this Order and admits the jurisdiction of the Commission with respect to the matters set forth in this Order and waives: (1) the service and filing of a complaint and notice of hearing; (2) a hearing and all post-hearing procedures; (3) judicial review by any court; (4) any and all objections to the participation of any member of the Commission's staff in consideration of the Offer; (5) any and all claims that it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2006) and 28 U.S.C. § 2412 (2006), and/or part 148 of the Regulations, 17 C.F.R. §§ 148.1-30 (2011), relating to, or arising from this action; (6) any and all claims that it may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-232, 110 Stat. 847, 857-68 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this proceeding; and (7) any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief.

The Respondent stipulates that the record basis on which this Order is entered consists of this Order and the findings in this Order consented to in its Offer. The Respondent consents to the Commission's issuance of this Order, which makes findings that Respondent violated Regulation 166.3, 17 C.F.R. § 166.3 (2011), and orders that the Respondent: (1) cease and desist from violating Regulation 166.3, 17 C.F.R. § 166.3 (2011); (2) pay a civil monetary penalty in the amount of \$180,000 (One Hundred Eighty Thousand Dollars) within ten (10) days of the date of the entry of this Order; and (3) comply with the undertakings consented to in its Offer and set forth below in Section VI of this Order.

Upon consideration, the Commission has determined to accept the Respondent's Offer.

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

A. The Respondent shall cease and desist from violating Regulation 166.3, 17 C.F.R § 166.3 (2011);

B. The Respondent shall pay a civil monetary penalty in the amount of \$180,000 (One Hundred Eighty Thousand Dollars), within ten (10) days of the date of entry of this Order (the “CMP Obligation”). Should the Respondent not satisfy the CMP Obligation within ten (10) days of the date of entry of this Order, 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 (2006). The Respondent shall pay the civil monetary penalty by making 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:

Commodity Futures Trading Commission
Division of Enforcement
Accounts Receivables – AMZ 340
E-mail Box: 9-AMC-AMZ-AR-CFTC
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone 405-954-5644

If payment by electronic transfer is chosen, the Respondent shall contact Linda Zurhorst at (405) 954-5644 or her successor at the above address to receive payment instructions and shall fully comply with those instructions. The Respondent shall accompany payment of the penalty with a cover letter that identifies the Respondent and the name and docket number of this proceeding. The Respondent shall simultaneously transmit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; and (2) the Chief, Office of Cooperative Enforcement, Division of Enforcement, Commodity Futures Trading Commission at the same address. In accordance with Section 6(e)(2) of the Act, 7 U.S.C. § 9a(2) (2006), if this amount is not paid in full within fifteen (15) days of the due date, the Respondent shall be prohibited automatically from the privileges of all registered entities, and, if registered with the Commission, such registration shall be suspended automatically until it has shown to the satisfaction of the Commission that payment of the full amount of the penalty with interest thereon to the date of the payment has been made.

C. Velocity and its successors and assigns shall immediately comply with the following undertakings set forth in its Offer:

- 1) For all accounts traded by third parties, Velocity shall develop, monitor, and enforce its supervisory system for overseeing such trading to determine, document, and monitor the monthly commission-to-equity ratios in any such active account;

- 2) Where threshold commission to equity ratios are established, Velocity shall (a) employ a procedure to confirm that the customer is aware of the commission-to-equity ratio and that such trading is consistent with the customer's trading objective or trading strategy; and (b) maintain such information in a readily accessible medium and ensure that it is promptly retrievable;
- 3) Velocity shall develop, monitor and enforce procedures that require Velocity to conduct a timely due diligence investigation of any agent, foreign introducing broker, foreign CTA, employee or person occupying a similar position wherein the subject individual occupies a position to control the trading in (or otherwise materially affect) customers' accounts;
- 4) Velocity shall incorporate such procedures described above, into Velocity's compliance structure and include them in Velocity's compliance manual; further, initial and ongoing training shall be given to all Velocity associated persons, compliance staff, and other employees concerning these procedures;
- 5) Velocity shall submit a report, drafted and signed by Velocity's general (in-house) counsel, or if Velocity does not have an in-house counsel, by its highest ranking officer, to the Commission's Division of Enforcement within 120 days of the issuance of the Order. The report shall describe the steps taken to comply with the undertakings and procedures described above; and
- 6) Neither Velocity, nor any of its successors, 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 Velocity's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Velocity and its successors and assigns shall undertake all steps necessary to ensure that all of its agents and employees under its authority and/or control understand and comply with this undertaking.

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

By the Commission:

Dated: November 9, 2011



David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission