



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581

In the Matter of

COMMODITY INVESTMENT GROUP, INC.,

Registrant.

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CFTC Docket No. SD 07-04

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INITIAL DECISION

Registrant Commodity Investment Group, Inc. ("CIG") has not responded to the Commission's notice of intent to revoke its registration¹ even though the Proceedings Clerk properly served the pleading.² Thus, CIG automatically fell

¹ Notice of Intent to Revoke Registration Pursuant to Section 8a(2)(C) and (E) of the Commodity Exchange Act, as Amended, dated July 26, 2007 ("Notice"). CIG is registered as an introducing broker. *Id.*, ¶2. The Notice sets forth allegations that the registrant is subject to statutory disqualification pursuant to Section 8a(2)(C) and (E) of the Commodity Exchange Act, 7 U.S.C. §12a(2)(C), (E). *Id.*, ¶¶3-10.

² This proceeding is conducted pursuant to Rule 3.60, 17 C.F.R. §3.60. Rule 3.50, 17 C.F.R. §3.50, governs service in Rule 3.60 proceedings. Rule 3.50(a) permits service by a number of methods but lists only one method as per se sufficient by stating, "service upon an applicant or registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the applicant or registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing." 17 C.F.R. §3.50(a). On July 26, 2007, the Proceedings Clerk sent the Notice to CIG by certified mail addressed to 3511 W. Commercial Blvd., Suite 400, Ft. Lauderdale, Florida 33309. Declaration of Tempest S. Thomas Pursuant to 28 U.S.C. §1746, dated September 28, 2007, ¶2(a)-(b) (attached as Exhibit 4 to Division of Enforcement's Memorandum of Law in Support of its Motion for Entry of Order of Default, Findings of Fact, Conclusions of Law and Revocation of Registration of Commodity Investment Group, Inc., dated October 3, 2007 ("Division's Memorandum")). This address was listed as that of the firm on its registration application then on file with the National Futures Association. Declaration of Gregory C. Prusik Pursuant to 28 U.S.C. §1746, dated (continued..)

into default.³ Given these circumstances, the Division of Enforcement's motion for a default judgment⁴ only requires us to determine whether the Division has adequately demonstrated the registrant's statutory disqualification pursuant to Section 8a(2)(C) or Section 8a(2)(E).⁵ If CIG is disqualified under either provision, then it will be found to be conclusively unfit for registration.⁶

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September 27, 2007, ¶6 (attached as Exhibit 1 to the Division's Memorandum). Consequently, service was proper and completed on July 26th, and the registrant's response was due by August 28, 2007. 17 C.F.R. §§3.50(a), 3.60(a)(3); In re Buckwalter, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,609 at 39,893 n.2 (CFTC Dec. 10, 1992).

³ 17 C.F.R. §3.60(a)(4).

⁴ Division of Enforcement's Motion for Entry of Order of Default, Findings of Fact, Conclusions of Law and Revocation of the Registration of Commodity Investment Group, Inc., dated October 3, 2007. CIG has not responded to the Division's motion.

⁵ Rule 10.93, 17 C.F.R. §10.93, governs the disposition of Rule 3.60 default judgment motions. 17 C.F.R. §3.60(g). In determining whether a default judgment is appropriate, we take as true a notice of intent's well-pled allegations of fact, as augmented by any evidence the Division may submit in support of the motion, and draw our own legal conclusions. In re Collins, [2003-2004 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶29,607 at 55,621 (CFTC Nov. 4, 2003).

⁶ Generally, the Division must establish the grounds for statutory disqualification by a preponderance of the evidence. 17 C.F.R. §3.60(e). Cf. In re Gath, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,751 at 44,111 (CFTC Aug. 2, 1996). Once the Division satisfies this requirement, a registrant is deemed presumptively unfit for registration and the burden of proof shifts. 17 C.F.R. §3.60(e)(1)-(2); In re Hirshberg, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,573 at 43,522 (CFTC Dec. 27, 1995). To overcome the presumption of unfitness arising out of 7 U.S.C. §12a(2), the registrant must show by clear and convincing evidence that it does not pose a substantial threat to the public if permitted to remain registered. 17 C.F.R. §3.60(e)(1); Hirshberg, [1994-1996 Transfer Binder] ¶26,73 at 43,522. To make
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Our analysis begins with the Notice. The following allegations, viewed in light of the entire record, are well-pled and we take them to be true. On June 21, 2005, the Commission filed a complaint in the United States District Court for the Southern District of New York.⁷ The pleading included allegations that, from at least February, 2001 to at least June 2005, CIG fraudulently solicited customers to trade options on futures contracts.⁸ On February 27, 2007, the District Court entered a consent order, finding, in relevant part, that CIG violated the anti-fraud provisions of 17 C.F.R. §33.10(a) and (c)⁹ and

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this showing, a registrant must present "[e]vidence mitigating the seriousness of the wrongdoing underlying the . . . disqualification" and/or evidence that the "registrant has undergone rehabilitation since the time of the wrongdoing underlying the statutory disqualification" (and, in certain cases not here applicable, evidence of adequate supervision). 17 C.F.R. §3.60(f)(1)-(3). See In re Horn, [1986-1987 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶23,731 at 33,889 (CFTC July 21, 1987). A registrant preserves the right to show that its continued licensure would pose no substantial risk to the public despite the existence of one or more statutory disqualifications by stating, in a response to the notice of intent, an intent to make such a showing. 17 C.F.R. §3.60(b)(2)(i). Here, CIG's default precludes it from introducing evidence of mitigation or rehabilitation. Thus, if we find it to be statutorily disqualified, the resulting presumption of unfitness will be conclusive.

⁷ Notice, ¶3.

⁸ Id., ¶4.

⁹ Id., ¶¶5-7. 17 C.F.R. §33.10 states, in relevant part,

It shall be unlawful for any person directly or indirectly:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(continued..)

permanently enjoining the firm from committing fraud in violation of those regulations.¹⁰ Thus, the Notice's well-pled allegations of fact establish grounds for disqualification under Section 8a(2)(C)¹¹ and 8a(2)(E).¹²

Because CIG is statutorily disqualified pursuant to Section 8a(2)(C) and 8a(2)(E), it is unfit for registration.¹³ Accordingly, we **GRANT** the Division's

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....

(c) To deceive or attempt to deceive any other person by any means whatsoever

in or in connection with an offer to enter into, the entry into, the confirmation of the execution of, or the maintenance of, any commodity option transaction.

See In re Staryk, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶27,206 at 45,810 (CFTC Dec. 18, 1997).

¹⁰ Notice, ¶8(a).

¹¹ Section 8a(2)(C) permits this agency to revoke the registration of any person who is permanently enjoined by a court order, "including an order entered pursuant to an agreement of settlement to which the Commission . . . is a party," from "engaging in or continuing any activity where such activity involves . . . fraud." 7 U.S.C. §12a(2)(C).

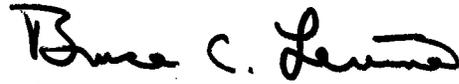
¹² Section 8a(2)(E) authorizes revocation in cases where the registrant has been found, "within ten years preceding the filing of the application [for registration] or at any time thereafter," in a proceeding "brought by the Commission . . . or by agreement of settlement to which the Commission . . . is a party" to have violated any provision of the Commodity Exchange Act or any regulation thereunder where such violation involves fraud. 7 U.S.C. §12a(2)(E).

¹³ See supra note 6.

motion for a default judgment and **REVOKE** CIG's introducing broker registration.

IT IS SO ORDERED.¹⁴

On this 18th day of October, 2007



Bruce C. Levine
Administrative Law Judge

¹⁴ Any party may appeal this initial decision to the Commission by filing a notice of appeal with the Proceedings Clerk within 18 days of the date upon which this order is served. 17 C.F.R. §§3.60(i)(1), 10.102(a). If no party files a notice of appeal and the Commission chooses not to place the case on its docket for review sua sponte, this initial decision shall automatically become the final decision of the Commission 30 days after service. 17 C.F.R. §3.60(i).