



U.S. COMMODITY FUTURES TRADING COMMISSION

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

In the Matter of

WORLDWIDE CLEARING, LLC,

Registrant.

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CFTC Docket No. 08-08-01

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INITIAL DECISION

Registrant Worldwide Clearing, LLC ("Worldwide") 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, the registrant is in

¹ Notice of Intent to Revoke Registration Pursuant to Section 8a(2)(C) and (E) of the Commodity Exchange Act, as Amended, dated January 2, 2008 ("Notice"). Worldwide is registered as a futures commission merchant. *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.*, ¶¶3-13.

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 January 3, 2008, the Proceedings Clerk sent the Notice to Worldwide by certified mail addressed to 1700 NW 64th Street, Suite 100, Ft. Lauderdale, Florida 33309. Declaration of Tempest S. Thomas Pursuant to 28 U.S.C. §1746, dated March 3, 2008, ¶2(a) (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 the Registration of Worldwide Clearing, LLC, dated March 5, 2008 ("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 Sandra A. Guard Pursuant to 28 U.S.C. §1746, dated February 12, 2008, ¶6 (continued..)

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 the registrant is disqualified under either provision, then the firm will be found to be conclusively unfit for registration.⁶ Our analysis of the record begins with the Notice and, because

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(attached as Exhibit 1 to Division's Memorandum). Consequently, service was proper and completed on January 3rd and Worldwide's response was due by February 5, 2008. 17 C.F.R. §§3.50(a), 3.60(a)(3), 3.60(k), 10.5; In re Buckwalter, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,609 at 39,893 n.2 (CFTC Dec. 10, 1992).

³ When it did not respond to the Notice in a timely fashion, Worldwide automatically fell into default. 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 Worldwide Clearing, LLC, dated March 5, 2008. Worldwide 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
(continued..)

the Division's other submissions do not render its relevant claims ill-pled, the pleading forms an adequate basis for our decision.

The following allegations are well-pled and we take them to be true. On September 30, 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 November 2004 to at least June 2005, Worldwide, through its agent International Currency Exchange, Inc., fraudulently solicited customers to invest in foreign currency option contracts.⁸ On September 14, 2007, the District Court entered a consent order, finding, in relevant part, that Worldwide violated the anti-fraud provisions of 17 C.F.R.

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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] ¶26,573 at 43,522. To make 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, Worldwide's default precludes it from introducing evidence of rehabilitation or mitigation. Thus, if we find it to be statutorily disqualified, the resulting presumption of unfitness will be conclusive.

⁷ Notice, ¶3.

⁸ Id., ¶¶4-5.

§32.9(a) and (c)⁹ and permanently enjoining it 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 Worldwide is statutorily disqualified pursuant to Section

⁹ Id., ¶¶6, 9. The regulation states,

It shall be unlawful for any person directly or indirectly:

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

....

(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, or the confirmation of the execution of, any commodity option transaction.

17 C.F.R. §32.9(a), (c). 17 C.F.R. §32.9 "appl[ies] to all commodity option transactions," regardless of whether they occur on or subject to the rules of a contract market or any other board of trade. 17 C.F.R. §32.1(a).

¹⁰ Notice, ¶10(a).

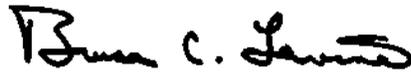
¹¹ Section 8a(2)(C), in relevant part, permits this agency to revoke the registration of any person who is permanently enjoined by a court order, "including an order entered pursuant to an agreement of settlement to which the Commission . . . is a party," from "engaging in or continuing any activity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

¹² Section 8a(2)(E), in relevant part, 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).

8a(2)(C) and 8a(2)(E), it is unfit for registration.¹³ Accordingly, we **GRANT** the Division's motion for a default judgment and **REVOKE** Worldwide's future commission merchant registration.

IT IS SO ORDERED.¹⁴

On this 20th day of March, 2008



Bruce C. Levine
Administrative Law Judge

¹³ See supra note 6.

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).