

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:)
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ADM Investor Services, Inc.)
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Respondent.)
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CFTC Docket No. 09-1
ORDER INSTITUTING
PROCEEDINGS PURSUANT TO
SECTIONS 6(c) AND 6(d) OF
THE COMMODITY EXCHANGE
ACT, MAKING FINDINGS AND
IMPOSING REMEDIAL
SANCTIONS

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I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that ADM Investor Services, Inc. (“ADMIS” or “Respondent”) has violated Section 4g of the Commodity Exchange Act (“CEA”), 7 U.S.C. § 6g (2006), and Commission Regulations (“Regulation”) 166.3, 1.35(a-1)(5), and 1.31, 17 C.F.R. §§ 166.3, 1.35(a-1)(5), and 1.31 (2008). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether ADMIS has engaged in the violations as set forth herein and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of this administrative proceeding, ADMIS has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Without admitting or denying any of the findings herein, ADMIS acknowledges service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”).¹

¹ ADMIS 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 ADMIS does not consent to the use of the Offer, or the findings 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 ADMIS consent to the use of the Offer or this Order, or the findings consented to in the Offer or this Order, by any other party in any other proceeding.

III.

The Commission finds the following:

A. Summary

During 2002-2004 (the “relevant period”), ADMIS, a futures commission merchant (“FCM”) registered with the Commission, failed to diligently supervise its employees concerning post-execution allocations of bunched orders in violation of Regulation 166.3. ADMIS had no written policy or procedures concerning post-execution allocations of bunched orders. To the extent ADMIS had unwritten procedures concerning such allocations, ADMIS on certain occasions failed to implement those procedures.

ADMIS allowed an account manager to conduct post-execution allocations days after orders were originally executed and failed to maintain records that identify orders subject to the post-execution allocations in violation of Regulation 1.35(a-1)(5)(iv)(C). In addition, ADMIS prepared, but failed to keep, forms related to such allocations in violation of Section 4g of the CEA and Regulation 1.31.

Accordingly, ADMIS violated Section 4g of the CEA and Regulations 166.3, 1.35(a-1)(5), and 1.31 and hereby submits an Offer, in which it, without admitting or denying the findings herein, consents to the entry of this Order. This Order, inter alia, requires ADMIS to: pay a civil monetary penalty of \$200,000; cease and desist from further such violations of the Act and Regulations; and comply with the undertakings as set forth in Part VI of this Order.

B. Respondent

ADM Investor Services, Inc. is a Delaware corporation with its principal place of business at 141 W. Jackson Blvd, Ste. 1600A, Chicago, Illinois, 60604. At all relevant times, ADMIS was registered with the Commission as a FCM.

C. Facts

During the relevant period, ADMIS did not have written procedures concerning post-execution allocations of bunched orders. ADMIS employees were unaware that all post-execution allocations must be received by the end of the day the order was executed. During the relevant period, ADMIS allowed an account manager to carry out post-execution allocations from one or more days after the day the trades were executed.

ADMIS’ unwritten policy and practice was to use certain forms referred to as “BAM” forms to document post-execution allocations that were received from an account manager telephonically. ADMIS’ policy was that each BAM form used for allocating trades: 1) was to include the account numbers for the accounts from and to which the bunched trade was allocated, the trade date, whether the trade was a buy or sell, a description of the contract including contract size and price, the order number, and an identification number; and 2) was to be time-stamped at the time of the allocation. On certain occasions, ADMIS failed to implement and execute its

own policy by failing to include the identification number or the date of the allocation or to time-stamp the BAM form.

ADMIS failed to keep for five years certain of its BAM forms for post-execution allocations of bunched orders by account managers. ADMIS also failed to produce these forms to the Commission when requested within the time ADMIS was required to maintain them.

D. Legal Discussion

1. Failure to Supervise

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 of all activities relating to its business as a registrant. Regulation 166.3 imposes on registrants an affirmative duty to supervise their employees and agents diligently by establishing, implementing, and executing an adequate supervisory structure and compliance programs. “The duty to supervise ... include[s] the broader goals of detection and deterrence of possible wrongdoing by a [registrant’s] agents.” *Lobb v. J.T. McKerr & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,568 at 33,444 (CFTC Dec. 14, 1989). 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 FCM has a “duty to develop procedures for the detection and deterrence of possible wrongdoing by its agents.” *Samson 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) (quoting *Lobb v. J.T. McKerr & Co.*, ¶ 24,568 at 36,444). A FCM also must ensure that these procedures are diligently administered. *In re GNP Commodities, Inc.*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,360 at 39,219 (CFTC Aug. 11, 1992) (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 in part and rev’d in part sub nom. Monieson v. CFTC*, 996 F. 2d 852 (7th Cir. 1993). 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. *Paragon Futures*, ¶ 25,266 at 38,850.

ADMIS failed to ensure that its employees were aware of and complied with the Regulations concerning post-execution allocations of bunched orders, particularly the requirement that all allocations be submitted to the FCM by the responsible account manager before the end of the day that the order was executed.² Moreover, ADMIS failed to ensure that

² Regulation 1.35(a-1)(5)(iii)(A) requires that: “[a]llocations must be made as soon as practicable after the entire transaction is executed, but in any event account managers must provide allocation information to future commission merchants no later than a time sufficiently before the end of the day the order is executed ...” ADMIS

its employees followed its own policy by permitting them to exclude from the BAM forms the identification number, the date of the allocation or the time-stamp. Thus, ADMIS failed to supervise diligently its employees in violation of Regulation 166.3.

2. Failure to Maintain and Produce Records

Regulation 1.35(a-1)(5)(iv)(C) requires FCMs to maintain records that identify each order subject to post-execution allocation and the accounts to which contracts executed for such order are allocated. On certain occasions, ADMIS failed to implement its policy to properly identify separate post-execution allocation orders by an identification number that was required on each BAM form. This identification number was intended to allow tracking of each order that was allocated. Thus, ADMIS violated Regulation 1.35(a-1)(5)(iv)(C).

Section 4g of the CEA and Regulation 1.31 together require registrants to keep all books and records required by the Act for a period of five years from the date of the record. Such records are also required to be readily accessible to the Commission and United States Department of Justice during the first two years of the five-year period.

A failure to retain and promptly produce such records for inspection to Commission staff constitutes a violation of Section 4g of the CEA and Regulation 1.31. *GNP Commodities*, ¶ 25,360 at 39,211 (FCM violated Section 4g(1) and Regulation 1.31(a) and 1.35(a) by failing to retain and produce upon request office orders and carbons that were the subject of a Commission Division of Enforcement investigation); *see also In re First Options of Chicago, Inc.*, CFTC Docket No. 99-3, 2000 WL 114327 (Order Making Findings and Imposing Remedial Sanctions, Jan. 27, 2000) (Commission imposed civil penalty and cease and desist order upon FCM that produced some requested trading records 19 months after request and was unable to produce other records).

Regulation 1.35(a-1)(5)(iv)(C) imposes a specific record keeping requirement for an FCM's handling of the post-allocation of bunched orders. Specifically, Regulation 1.35(a-1)(5)(iv)(C) requires FCMs to maintain records identifying each order subject to post-execution allocation.

As detailed above, ADMIS had an unwritten policy of creating BAM forms every time a post-execution allocation instruction was received telephonically. ADMIS failed to retain certain of the BAM forms for the allocations done during the relevant period and was unable to locate and thus failed to produce certain of these forms to the Commission when requested. Thus, by failing to maintain, preserve or produce the BAM forms for certain post-execution allocations during the relevant period, ADMIS violated Section 4g of the CEA and Regulations 1.31 and 1.35(a-1)(5)(iv)(C).

policy during the relevant period permitted account managers to provide allocation information one to five days after the order was executed.

IV.

OFFER OF SETTLEMENT

ADMIS has submitted the Offer in which it, without admitting or denying the findings herein:

- A. Acknowledges receipt of service of this Order;
- B. Admits the jurisdiction of the Commission with respect to all matters set forth in this Order;
- C. Waives: the filing and service of a complaint and notice of hearing; a hearing; all post-hearing procedures; judicial review by any court; any and all objections to the participation by any member of the Commission's staff in consideration of the Offer; any and all claims that it may possess under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), and/or Part 148 of the Regulations, 17 C.F.R. §§ 148.1, *et seq.* (2008), relating to, or arising from, this proceeding; any and all claims that it may possess under the Small Business Regulatory Enforcement Act, 1996 HR 3136, Pub. L. 104-121, §§ 231-232, 110 Stat. 862-63 (Mar. 29, 1996), as amended by Pub. L. No. 110-28, 121 Stat. 112 (2007), relating to, or arising from, this proceeding; and 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;
- D. Stipulates that the record upon which this Order is entered shall consist solely of the findings contained in this Order to which the Respondent has consented; and
- E. Consents, solely on the basis of the Offer, to entry of this Order that:
 - 1. makes findings by the Commission that ADMIS violated Section 4g of the CEA, 7 U.S.C. § 6g, and Regulations 1.31, and 1.35(a-1)(5)(iv)(C), and 166.3, 17 C.F.R. §§ 1.31, 1.35(a-1)(5)(iv)(C) and 166.3;;
 - 2. orders ADMIS and its successors and assigns to cease and desist from violating Section 4g of the CEA and Regulations 1.31, and 1.35(a-1)(5)(iv)(C), and 166.3;
 - 3. orders ADMIS to pay a civil monetary penalty in the amount of two hundred, thousand dollars (\$200,000.00) within ten (10) days of the date of the entry of this Order; and
 - 4. orders ADMIS and its successors and assigns to each comply with the undertakings consented to in the Offer and set forth below in Part VI of this Order.

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

V.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that ADMIS violated Section 4g of the CEA, 7 U.S.C. § 6g (2006), and Regulations, 166.3, 1.35(a-1)(5), and 1.31, 7 U.S.C. § 6g and 17 C.F.R. §§ 166.3, 1.35(a-1)(5), and 1.31 (2008).

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

- A. ADMIS and its successors and assigns shall cease and desist from violating Section 4g of the CEA and Regulation Regulations 166.3, 1.35(a-1)(5), and 1.31, 7 U.S.C. § 6g and 17 C.F.R. §§ 166.3, 1.35(a-1)(5), and 1.31;
- B. ADMIS shall pay a civil monetary penalty in the amount of two hundred thousand dollars (\$200,000.00), plus post-judgment interest, within ten (10) days of the date of the entry of this Order. Post-judgment interest shall accrue beginning eleven (11) days after 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. ADMIS shall pay this 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
ATTN: Marie Bateman – AMZ-300
DOT/FAA/MMAC
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169
Telephone 405-954-6569

If payment by electronic transfer is chosen, ADMIS shall contact Marie Bateman or her successor at the above address to receive payment instructions and shall fully comply with those instructions. ADMIS shall accompany payment of the civil penalty with a cover letter that identifies ADMIS and the name and docket number of this proceeding. ADMIS shall simultaneously submit copies of the cover letter and the form of payment to: (1) the Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 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, ADMIS 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; and

- C. ADMIS and its successors and assigns shall comply with the following undertakings set forth in the Offer:
- a. ADMIS shall prepare and adopt written procedures in accordance with Regulation 1.35(a-1)(5) and ensure that all its employees and agents who are responsible for post-execution allocations are familiar with the relevant requirements;
 - b. ADMIS shall ensure that all post-execution allocations are conducted no later than the end of the day on which the order was originally executed;
 - c. ADMIS shall require that all post-execution allocations for accounts cleared through ADMIS shall be done in writing and that the allocation methodology shall be received by ADMIS from account managers sufficiently before the end of the trading day;
 - d. ADMIS shall ensure that all post-execution allocations have, at the minimum,
 - i) information that identifies the account manager at the time of the order is placed and instructions for the contracts to be given up, ii) information concerning the number of contracts to be allocated to each account included in the order along with instructions for the allocation of split and partial fills among accounts, iii) a proper date and time-stamp, and iv) sufficient information to identify each order subject to post-execution;
 - e. If ADMIS has actual or constructive notice that allocations for its customers may be fraudulent, ADMIS shall take appropriate action and make a reasonable inquiry, and if necessary, shall notify the Commission and the National Futures Association;
 - f. ADMIS shall ensure that there is a written record of all post-execution allocations and shall maintain that record for a minimum of five years from the date of its creation;
 - g. Neither ADMIS nor any of its successors, assigns, employees, agents, or representatives shall take any action or make any public statement denying, directly or indirectly, any finding in the Order, or creating, or tending to create, the impression that the Order is without a factual basis; provided, however, that nothing in this provision affects ADMIS's (i) testimonial obligations; or (ii) right to take appropriate legal positions in other proceedings to which the Commission is not a party. ADMIS and its successors and assigns shall take all steps necessary to ensure that all of their employees, agents and representatives under their authority and/or actual or constructive control understand and comply with this undertaking; and

h. ADMIS shall continue to cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement in this proceeding and in any civil or criminal investigation, litigation, or administrative matter related to the subject matter of this proceeding. As part of such cooperation with the Commission, ADMIS agrees to:

(1) preserve all records that have been previously identified by Respondent to the staff of the Commission as relevant to the subject matter of this proceeding (including records copies of which have been previously provided to the staff of the Commission in connection with the investigation that led to this proceeding), including but not limited to audio files, e-mails, BAM forms, and trading records for a period of five years from the date of this Order;

(2) comply fully, promptly, completely, and truthfully with any inquiries or requests for information or documents;

(3) provide authentication of documents and other evidentiary material;

(4) produce any current (as of the time of the request) officer, director, employee, or agent of ADMIS, regardless of the individual's location and at such location that minimizes Commission travel expenditures, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation; and

(5) assist in locating and contacting any prior (as of the time of the request) officer, director, employee or agent of ADMIS.

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

By the Commission.



Sauntia S. Warfield
Staff Assistant

Dated: March 26, 2009